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# Free, Prior and Informed Consent in Canada:

## Towards a New Relationship with Indigenous Peoples

**Free, prior and informed consent** is a principle that has been developed to describe important procedural and substantive aspects of the active engagement with and participation in decision making by Indigenous people with respect to projects and other activities affecting their ancestral land or their Indigenous rights. As a country, Canada is on a continued journey to redress the injustices of the past, to address the social and economic imbalance of the present, and most importantly, to set a path for the future.

In this new era of reconciliation, free, prior and informed consent is identified as an important issue for Indigenous peoples, for governments, for project proponents, for employers, and for the investment community—indeed for all Canadians. TD has sponsored this work with the hope that it will inform and support constructive dialogue on this important topic.

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PART I

# INTRODUCTION

1. We have been asked to prepare a discussion paper analyzing the application in Canada of the principles of free, prior and informed consent for Indigenous peoples in respect of government measures that may affect them, and how this may comport with the similar domestic duty to consult, and if appropriate, accommodate Aboriginal peoples' interests.[1] This paper first reviews the principles of free, prior and informed consent under the 2007 United Nations Declaration on the Rights of Indigenous Peoples as well as Canada's evolving position on those principles and what weight they may carry. Second, we review Canadian law on the duty to consult and, if appropriate, accommodate Indigenous rights and interests. Third, from this review of the applicable domestic and international law, we suggest an approach to meeting the letter and spirit of these standards in practice. This approach is grounded in the need to facilitate reconciliation among Canada's governments, Indigenous peoples and the rest of Canadian society. We suggest:

(a) building a relationship with Indigenous peoples founded on mutual respect and trust, focused on furthering each other's long-term interests, and not simply concluding a transaction for short-term gain;

(b) approaching the relationship through a model of partnership;[2]

[1] This paper was authored by a team led by The Hon. Frank Iacobucci and including John Terry, Valerie Heilbronner, Michael Fortier, and Ryan Lax. The views expressed in this paper are those of the authors based on their years of practice and are not to be taken as the views of any clients or other members of Torys LLP.

(c) providing Indigenous peoples with a meaningful opportunity to participate in both procedural and substantive dimensions; and

(d) involving governments to help align parties incentives, and otherwise facilitate appropriate consultation processes.

2. The Declaration sets out a statement from the international community on the manner in which international human rights law should apply to Indigenous people. Among other things, the Declaration addresses circumstances in which states must consult Indigenous[3] peoples when their rights or interests are potentially affected by a proposed measure, with the aim of obtaining their free, prior and informed consent, and circumstances in which states must refrain from action if that consent cannot be obtained. As part of Canada's constitutional protection of Aboriginal and treaty rights, Canadian courts have enunciated a duty to consult and, if appropriate, accommodate Aboriginal peoples when their rights, claimed or established, are potentially affected by a government action. Courts have adjudicated a significant volume of cases alleging deficiencies in consultation.

3. These international and domestic legal principles share a common purpose: to protect Indigenous peoples' underlying rights, to remedy the significant historical disadvantage and disenfranchisement Indigenous peoples have faced, and to provide the foundations for a more dignified ongoing relationship that reconciles Indigenous peoples' self-government and other rights with non-Indigenous people and governments of Canada. Both sets of principles are intended to provide a foundation for more responsible development activity in which Indigenous people are able to participate and from which they may benefit. While the purpose of this paper is not to review the history of Canada's relationship with Indigenous peoples, it is important to begin any discussion of Indigenous rights from this perspective.[4]

[2] By "partnership" in this context we do not necessarily mean a legal partnership. Rather, we intend to emphasize the importance of understanding Indigenous consultation and, if appropriate, accommodation as a process in which two or more groups come together in the aim of mutual benefit in a manner that accommodates each other's interests.

[3] For the purpose of this paper we have used the term "Indigenous" when speaking about Indigenous peoples generally, and "Aboriginal" (referring to First Nations, Inuit and Métis peoples in Canada) when speaking directly about section 35 of the *Constitution Act, 1982* or Canadian jurisprudence.

[4] This history is discussed in greater depth in other publications. See for example: The Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg, MB: The Truth and Reconciliation Commission of Canada, 2015) ("Truth and Reconciliation Commission"); The Hon. Frank Iacobucci, "The Indian Residential School Legacy of Canada: A Tragic Past, A Hopeful Future" (The 2015 Larkin-Stuart Lecture delivered at the George Ignatieff Theatre, Trinity College, 3 November 2015) [publication forthcoming].

## Canada's historical relationship with Indigenous peoples

4. Canada's history begins from one fundamental truth: when Europeans arrived in North America, they encountered Indigenous peoples who had lived here for many generations, since "time immemorial."[5] Those peoples established distinct cultures, societies, economies, forms of government and ways of life that pre-dated the arrival of Europeans and have continued, at least in some of these respects, after contact.

5. The British Crown often, but not always, entered into treaties with Indigenous peoples to define their mutual rights and obligations in what would become Canada, on a nation-to-nation basis. However, treaties were at times signed in the aftermath of violent confrontation or under forms of coercive pressure, and even when concluded, treaties were not always honoured in full or have been subject to linguistic misunderstanding. Though the French also settled in the lands that would become Canada, they did not formalize their relationship with Indigenous peoples through treaty.

6. For too long after Confederation, Indigenous peoples were treated as wards of the state, not citizens. They had no rights to vote, own property or move freely on and off reserves. Indigenous peoples were subject to an insufficient welfare system and were provided vastly inadequate education, health care, employment opportunities, potable water, sanitation, and other services. Many of these conditions continue in some places today.

7. From before Confederation, Canada operated a system of Indian Residential Schools, which forcibly removed Indigenous children from their families and communities in the aim of assimilating them into Canadian society. Families and communities were torn apart. Children were subject to abuse. At least 3,200 deaths were recorded, though burial records are scant and the actual total is likely higher. These schools have been variously described as "one of the gravest injustices in Canadian history,"[6] "the most disgraceful, harmful, racist experiment ever conducted in our history,"[7] and "cultural genocide."[8] The final such school closed in 1996. Their emergence as a public issue is discussed below.

[5] See e.g. *Calder v. British Columbia (Attorney General)*, [1973] S.C.R. 313 at para. 2 ("Calder").

[6] Mayo Moran & Kent Roach, "Introduction: The Residential Schools Litigation and Settlement" (2014) 64:4 U.T.L.J. 479 at 480.

[7] Liberal Justice Minister Irwin Cotler, cited in George Jonas, "Residential schools were a savage solution to a lingering problem" *National Post* (16 January 2013), online: National Post <http://news.nationalpost.com/full-comment/george-jonas-residential-schools-were-a-savage-solution-to-a-lingering-problem>.

[8] Truth and Reconciliation Commission, *supra* note 4 at 1; The Right Honourable Beverley McLachlin, P.C., "Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance" (Global Centre for Pluralism Annual Pluralism Lecture 2015, delivered at the Aga Khan Museum, 28 May 2015), online: Global Centre for Pluralism, <http://www.pluralism.ca/images/PDF_docs/APL2015/APL2015_BeverleyMcLachlin_Lecture.pdf>.

## The modern imperative of reconciliation

8. More recently, there has been growing recognition by Canadian governments and citizens of the need to heal, improve, and repair the relationship with Indigenous peoples. A first significant step was taken in 1982, when the Constitution was amended to protect existing Aboriginal and treaty rights. Constitutionalization has given greater weight to enforcement of Aboriginal rights.

9. In the early 1990s, the Indian Residential Schools emerged as a public issue as survivors began to tell their stories. Through the 1990s and early-2000s, approximately 15,000 survivors commenced individual civil suits against the federal government and churches who ran residential schools; 23 class actions were launched. In the face of this, in May 2005, the federal government initiated a sea change in its policy toward survivors. It announced a comprehensive approach to resolving this legacy, including providing financial compensation for every survivor and settlement of legal claims.

10. As part of the settlement, the government established a Truth and Reconciliation Commission to educate Canadians on what happened, obtain records, assemble archives, and provide all concerned with an opportunity to tell their stories. In December 2015, the Commission released its final report, a multi-volume statement of its activities and methodology, the history of residential schools, their legacy and the issues and challenges that lie ahead.[9]

11. As part of this report, the Commission included 94 "Calls to Action" to reorient the relationship between Indigenous peoples and Canada.[10] Their unambiguous purpose is reconciliation. It is worthwhile to emphasize the Commission's definition of reconciliation:

> The Commission defines reconciliation as an ongoing process of establishing and maintaining respectful relationships. A critical part of this process involves repairing damaged trust by making apologies, providing individual and collective reparations, and following through with concrete actions that demonstrate real societal change. Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions. It is important that all Canadians understand how traditional First Nations, Inuit and Métis approaches to resolving conflict, repairing harm, and restoring relationships can inform the reconciliation process.[11]

12. The process of reconciliation is still beginning in earnest in Canada. There is much ground that all levels of government in Canada, Indigenous peoples and the rest of Canadian society have to cover. We approach the topic of this paper—the application of the international principles of free, prior and informed consent in Canada—in light of this history and through the lens of reconciliation. While this topic asks for legal analysis, it cannot be divorced from this history or broader social context.

13. The international principles of free, prior and informed consent have been incorporated into various corporate codes of conduct, and the Truth and Reconciliation Commission recommended the implementation of the Declaration by all Canadian governments and the private sector.[12] But the precise manner in which the principles of free, prior and informed consent apply in Canada is in its embryonic stages of development. It has spurred a lively debate regarding their scope, reach and implications for Canadian law and policy. The Canadian business community and Indigenous peoples alike would benefit from further direction from all levels of government. This paper does not advocate for a particular position, but contributes an approach in light of the purpose of reconciliation, discussed in Part IV below.

[9] Truth and Reconciliation Commission, *supra* note 4.

[10] *Ibid.* at 319-39.

[11] *Ibid.* at 16-17.

[12] *Ibid.* at 319-39; "The Equator Principles (June 2013)" *Equator Principles*, online: Equator Principles <http://www,equator-principles.com/resources/equator_principles_III.pdf> ("Equator Principles (June 2013)"); "The Ten Principles of the U.N. Global Compact" *United Nations Global Compact*, online: United Nations Global Compact <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

PART II

# THE PRINCIPLES OF FREE, PRIOR AND INFORMED CONSENT

## History and development of the principles of free, prior and informed consent

14. The concept of free, prior and informed consent was first articulated in the *Indigenous and Tribal Peoples Convention, 1989* (the ILO Convention) negotiated under the auspices of the International Labour Organization.[13] Article 16 of the ILO Convention guarantees to Indigenous peoples the right not to be removed from their lands unless necessary, and with their free and informed consent. If consent cannot be obtained, the ILO Convention requires that Indigenous peoples should not be removed without a public consultation process. It further establishes a right to return to the lands when possible, and if not possible, to be provided with full compensation.[14] Article 15 also confirms Indigenous peoples' right to the natural resources on their lands. However, to date, the ILO Convention has been ratified by only 22 countries, not including Canada.[15]

15. The human rights bodies of the Organization of American States (the OAS) have developed a complementary set of rights jurisprudence over the last fifteen years. The Inter-American Commission on Human Rights and Court of Human Rights[16] has

recognized Indigenous peoples' rights to land, natural resources found on traditional territories, and ultimately to free, prior and informed consent with regard to large-scale development projects impacting their survival.[17] These rights are grounded in the rights to protection of property, culture and due process contained in the American Declaration on the Rights and Duties of Man (the American Declaration) and the American Convention on Human Rights (the American Convention).[18] While Canada has been a member of the OAS since 1990, it has not ratified, and therefore is not bound by, the American Convention. The American Declaration is not binding on OAS member states, but has been relied on by OAS human rights bodies as an interpretative aid in assessing the conduct of member states.

[13] *Indigenous and Tribal Peoples Convention, 1989* (No. 169) (27 June 1989), Geneva, 76th ILC session (entered into force 5 September 1991); A prior ILO Convention, No. 107, contained a much weaker antecedent to the FPIC right (Article 12) easily subordinated to government interests, economic development and national laws. *Indigenous and Tribal Populations Convention, 1957* (No. 107) (26 June 1957), Geneva, 40th ILC session (entered into force 2 June 1959).

[14] *Indigenous and Tribal Peoples Convention, 1989 (No. 169)* (27 June 1989), Geneva, 76th ILC session (entered into force 5 September 1991) at art. 16.

[15] "Ratifications of C169 *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*" *International Labour Organization* (27 June 1989), Geneva, 76th ILC session (entered into force 5 September 1991), online: International Labour Organization <http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314>; Most other settler countries and former colonies similarly refrained from ratifying the Convention, including Canada, the U.S., Australia and New Zealand.

[16] The Inter-American Commission on Human Rights addresses human rights conditions in the 35 member states of the OAS, including Canada. It observes and reports on human rights conditions through site visits, holds thematic hearings on specific areas of concern, and requests the adoption of precautionary or remedial members to protect individuals at risk. Individuals may submit complaints for the Commission to investigate. By contrast, the Inter-American Court of Human Rights hears specific cases of violations of human rights brought by individuals or groups in one of the 20 countries that has accepted its jurisdiction, which Canada has not done. "Inter-American Human Rights System," *International Justice Resource Center*, online: International Justice Resource Center, <http://www.ijrcenter.org/regional/inter-american-system/>.

[17] Tara Ward, "The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law" (2011) 10:2 Nw. J. Int'l Hum. Rts. 54 at 61 ("Ward"); *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 79; *Mary and Carrie Dann v. United States* (2002), Inter-Am. Comm'n H.R., Case 11.140, Report No. 75/02, OEA/Ser.L/V/II.118, doc. 5 Rev, para. 1; *Maya Communities of the Toledo District v. Belize* (2004), Inter-Am. Comm'n H.R., Case 12.053, Report No. 40/04, OEA/Ser.L/V/II.122 doc. 5, Rev. 1 at para 194; *Saramaka People v. Suriname* (2007), Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 174 at paras. 131, 136; *Kichwa People of Sarayaku v. Ecuador* (2002), Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 245.

[18] Ward, *supra* note 17 at 61; Alex Page, "Indigenous Peoples' Free Prior and Informed Consent in the Inter-American Human Rights System" (2004) 4:2 Sustainable Development Law and Policy at 16; OAS, Conference of American States, Ninth International, *American Declaration on the Rights and Duties of Man*, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948) at arts. 13, 23, 26; OAS, Inter-American Specialized Conference on Human Rights, *American Convention on Human Rights*, 1144 U.N.T.S. 123 (1969) at arts. 21, 26.

## The United Nations Declaration on the Rights of Indigenous Peoples

16. The United Nations General Assembly adopted the U.N. Declaration on the Rights of Indigenous Peoples in 2007. The Declaration was negotiated over 25 years by states, Indigenous groups, human rights organizations, and others.[19] 143 member states voted in favour of its adoption, while Australia, Canada, New Zealand, and the United States were the only four votes against. However, each country subsequently endorsed the Declaration in some form.[20]

### The principles of free, prior and informed consent

17. The Declaration contains several provisions incorporating the language of "free, prior and informed consent." The most general is Article 19, which obliges states to "consult and cooperate in good faith with indigenous peoples... in order to obtain their free, prior and informed consent before adopting and implementing" measures that may affect them.[21]

18. Other provisions of the Declaration set out more specific obligations requiring degrees of "free, prior and informed consent" in specific contexts:

(a) Article 32 obliges states to "consult and cooperate in good faith with indigenous peoples... in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources" particularly in connection with resource exploitation.[22]

(b) Article 28 establishes a right to redress for indigenous peoples for lands, territories and resources that they have traditionally owned, occupied or used, "which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent."[23]

[19] United Nations Declaration on the Rights of Indigenous Peoples, GA. Res. 61/295, UN GAOR, 61st Sess., Annex, UN Doc. A/RES/61/295 (2007) ("*United Nations Declaration on the Rights of Indigenous Peoples* (2007)"); *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, General Assembly 64th Sess., UN Doc. A/64/338 (2009) at para. 40 ("*Report of the Special Rapporteur* (2009)").

[20] *Report of the Special Rapporteur* (2009), *supra* note 19 at para. 41. In general terms, these countries initially opposed the Declaration because of concerns regarding the scope of some of the rights it contains and how those rights may interact with domestic legal systems, including the principles of free, prior and informed consent, and the degree to which the Declaration provides rights to lands now owned by others. Canada's initial concerns are discussed in greater detail below.

[21] *United Nations Declaration on the Rights of Indigenous Peoples* (2007), *supra* note 19 at Article 19 [emphasis added].

[22] *Ibid.* at Article 32(2) [emphasis added].

[23] *Ibid.* at Article 28(1) [emphasis added].

(c) Article 29 requires states to take effective measures to avoid storage or disposal of hazardous materials "in the lands or territories of indigenous peoples without their free, prior and informed consent."[24]

(d) Article 10 protects Indigenous peoples from being "forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."[25]

19. The recitals and more general provisions in the Declaration provide interpretive context. The recitals state the United Nations' concern "that indigenous peoples have suffered from historic injustices as a result of... their colonization and dispossession of their lands, territories and their resources," and the intention that the rights in the Declaration will "enhance harmonious and cooperative relationships between the State and indigenous peoples."[26] Article 1 states that Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms.[27] Articles 3 and 4 state that Indigenous peoples have the right to self-determination, including to freely determine their political status and freely pursue their economic, social and cultural development, and to autonomy or self-government regarding internal or local affairs.[28] Article 43 emphasizes that the rights contained in the Declaration constitute "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."[29]

20. The Declaration also recognizes that state practice differs, that the situation of Indigenous peoples varies across regions and countries, and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration in applying the rights it sets out.[30] Of special significance, article 46(2) makes clear that the Declaration's provisions are not absolute, but "subject only to such limitations as are determined by law and in accordance with international human rights obligations" on the condition that they are "non-discriminatory," "necessary solely for the purpose of securing due recognition

[24] *Ibid.* at Article 29(2) [emphasis added].

[25] *Ibid.* at Article 10 [emphasis added].

[26] *Ibid.* at recitals pp. 2-4.

[27] *Ibid.* at Article 1.

[28] *Ibid.* at Article 3-4.

[29] *Ibid.* at Article 43.

[30] *Ibid.* at recitals p. 4.

and respect for the rights and freedoms of others" and for "meeting the just and most compelling requirements of a democratic society."[31]

**What is required by the principles of free, prior and informed consent?**

21. The United Nations Special Rapporteur on the Rights of Indigenous Peoples is an expert in the field of indigenous rights appointed by the U.N. Human Rights Council to examine obstacles to protecting rights of Indigenous peoples, to review alleged violations of Indigenous rights, and to make recommendations on appropriate measures to prevent and remedy violations.[32] In carrying out this mandate, the Special Rapporteur submits to the U.N. Human Rights Council both general reports on the conduct of his or her activities and specific reports in respect of individual countries. The resolutions appointing the Special Rapporteur specifically direct that the Declaration form part of the normative foundation of his or her mandate.[33] The first Special Rapporteur was S. James Anaya, an American indigenous and human rights law scholar, who served until 2014.[34]

22. **Consultation with the objective of consent:** The Special Rapporteur has consistently emphasized the importance of good faith dialogue and meaningful consultation in the aim of achieving consent as the primary objective of the principles of free, prior and informed consent. The purpose is to "reverse historical patterns of imposed decisions and conditions of life that have threatened the survival of indigenous peoples."[35] In this way, the "principles of consultation and consent" have the objective of "avoiding the imposition of the will of one party over the other," and "striving for mutual understanding and consensual decision-making."[36]

23. In this context, the Special Rapporteur has emphasized that the obligation to carry out consultations with Indigenous peoples in "good faith... in order to obtain

[31] *Ibid.* at Article 46(2).

[32] *Ibid.* at Article 28.

[33] *Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples*, HRC Res. 15/14, 15th Sess., UN Doc. A/HRC/15/60.

[34] In June 2014, Victoria Tauli-Corpuz, a Philippine indigenous rights scholar and activist, and former chair of the United Nations Permanent Forum on Indigenous Issues, was appointed to replace him. As her appointment is still recent, there are few reports that she has produced. Thus far Ms. Tauli-Corpuz has focused more on gender and Indigenous rights, an important topic but further from the subject of this paper. For that reason, most of the Special Rapporteur's reports discussed in this paper focus on Mr. Anaya's work.

[35] *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, HRC, 12th Sess., UN Doc. A/HRC/12/34 (2009) at paras. 46, 49 ("Report of the Special Rapporteur, HRC (2009)").

[36] *Ibid.* at para. 49.

their free, prior and informed consent" should not be regarded as a "veto power" that Indigenous peoples hold over decisions that may affect them. Instead, the Declaration establishes "consent as the objective of consultations with indigenous peoples," not a free-standing right in all circumstances.[37] While a veto enables arbitrary or uninformed decisions and inhibits meaningful consultation, consultation in the aim of achieving consent emphasizes meaningful and informed dialogue and accommodation.

24. The importance of achieving free, prior and informed consent varies depending on the circumstance. The character of a consultation procedure is shaped by "the nature of the [Indigenous] right or interest at stake" and "the anticipated impact of the proposed measure."[38] The Special Rapporteur has stated that a significant impact on Indigenous peoples' lives or territories "establishes a strong presumption that the proposed measure should not go forward without... consent."[39] Circumstances where consent may be necessary are discussed at paragraphs 30 to 32, below.

25. **The Special Rapporteur has stated that most consultation processes require certain key elements in order to be considered free, informed and in good faith.** First, in designing a consultation process, attention must be paid to the implications of power imbalances that may exist between Indigenous groups and the corporations or governments engaging in consultation, and if necessary deliberate steps should be taken to address them.[40] This may include providing resources, support or independent legal advice to Indigenous groups. The consultation procedure itself should be the product of consensus.[41]

26. Second, Indigenous groups affected must have full access to information regarding the project, including technical studies, financial plans, environmental assessments, and other relevant documents that the context demands. Indigenous groups may also be involved in the conduct of those studies.[42]

27. Third, consultations should take place before the government authorizes or a company undertakes or commits to undertake any activity related to the project

[37] *Ibid.* at para. 46.

[38] *Ibid.* at paras. 46, 47.

[39] *Ibid.* at para. 47.

[40] *Report of the Special Rapporteur on the rights of indigenous people*, HRC, 24th Sess., UN Doc. A/HRC/24/41 (2013) at para. 63 ("*Report of the Special Rapporteur, HRC* (2013)").

[41] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 47.

[42] *Report of the Special Rapporteur, HRC* (2013), *supra* note 40 at paras. 65-66.

within Indigenous territory or other lands subject to Indigenous rights.[43] In practice, consultation may have to take place at multiple stages of a project, from its initial proposal, through exploration, development, and operation, to its closure.[44] Indigenous groups should be consulted from the earliest stages to build trust and cooperation. Starting the consultation process at later stages often engenders distrust, making agreement or consent more difficult to achieve.[45]

28. Fourth, Indigenous peoples should be consulted through their own representative institutions, leadership and decision-making structures.[46] This gives recognition to Indigenous peoples' own choices and forms of self-government, thereby according the consultation process greater legitimacy. The process of determining whom to consult may not be straightforward in every context, as it can be the case that multiple individuals or institutions claim to represent a group.

29. In circumstances in which consent cannot be obtained, the Special Rapporteur recommends that the state not move forward with the project without satisfying two conditions: first, the state must demonstrate that the rights of affected Indigenous peoples will be adequately protected; and second, that the impacts of the project will be mitigated to the extent possible.[47] Protection and mitigation may in part involve compensating Indigenous peoples for rights that are lost.[48] If these two conditions cannot be adequately satisfied, the state must justify the infringement by balancing the rights at issue with the need to respect other human rights and the public interest in "meeting the just and most compelling requirements of a democratic society."[49] The Special Rapporteur has expressed doubt that a purely commercial project would satisfy this criterion.[50] While the question of what constitutes a purely commercial venture has not been explored in depth, the concept likely relates to the degree to which Indigenous peoples benefit from the project, if at all. It is important to note that, in the domestic Canadian context, as discussed at paragraphs 61 to 65,

[43] *Ibid.* at para. 67.

[44] *Ibid.* at para. 67.

[45] *Ibid.* at para. 68.

[46] *Ibid.* at paras. 70-71.

[47] *Report of the Special Rapporteur on the rights of indigenous people*, GA. 66th Sess., UN Doc. A/66/288 (2011) at para. 86 (*"Report of the Special Rapporteur* (2011)").

[48] *Ibid.* at para. 98.

[49] *United Nations Declaration on the Rights of Indigenous Peoples* (2007), *supra* note 19 at art. 46.

[50] *Report of the Special Rapporteur, HRC* (2013), *supra* note 40 at para. 35.

the degree to which this analysis applies may differ as between proven Aboriginal title and rights on the one hand, and unproven rights or interests on the other.

30. **Consultation where the impact of a project is extreme and there is no consent:** The Declaration recognizes two situations of extreme impact on Indigenous peoples requiring their free, prior and informed consent. Articles 10 and 29 prohibit the storage or disposal of hazardous materials on Indigenous lands, and the relocation of Indigenous peoples, without their free, prior and informed consent.[51] This mandatory language stands in contrast to the more general obligation to "consult... in order to obtain" free, prior and informed consent found in Article 19 and elsewhere. In these circumstances it is appropriate to think of consent as a requirement or prerequisite to proceeding with a project, rather than the end goal of the consultation process.[52]

31. There is some suggestion from the Special Rapporteur that consent may be similarly required in other circumstances of extreme impact on Indigenous peoples analogous to the two examples entrenched in the Declaration. For example, the Special Rapporteur references with approval the Inter-American Court of Human Rights case involving the Saramaka people of Suriname, in which the Court held that, for a large-scale project that may severely impact the survival of an Indigenous group (in this case, logging and mining), the state has the duty to obtain free, prior and informed consent.[53]

32. However, the precise scope of the principles of free, prior and informed consent, and the issue of whether, and in what circumstances, Indigenous peoples' consent may be required is still in its embryonic stages of development and subject to future interpretation and development by governments and international bodies.

**When does the obligation arise?**

33. As the Declaration is still relatively new, there is not a well-developed body of reports or examples as to when these consultation and consent obligations arise. However, the Special Rapporteur has provided some guidance. He has stated that the duty to consult with the aim of achieving consent arises whenever a state decision may affect Indigenous peoples in ways not felt by others in society. This occurs when interests and rights particular to Indigenous peoples are implicated.[54] The

[51] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 47; *Report of the Special Rapporteur* (2011), *supra* note 47 at paras. 83-84.

[52] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 47; *Report of the Special Rapporteur on the rights* (2011), *supra* note 47 at paras. 83-84.

[53] *Saramaka People v. Suriname* (2007), Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 172, at para. 134; *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 47.

Special Rapporteur provides the example that land or resource use regimes may apply broadly, but affect Indigenous rights and interests in unique ways.[55]

34. The Special Rapporteur has also stated that the duty to consult "arises whenever [Indigenous peoples'] particular interests are at stake, even when those interests do not correspond to a recognized right to land or other legal entitlement."[56] The duty would arise "in respect of resources owned by the State pertaining to the lands that the peoples concerned occupy or otherwise use, whether or not they hold ownership title to those lands."[57]

**What is the impact of this obligation?**

35. Because the Declaration is a United Nations resolution rather than a treaty, its provisions, including those respecting the principle of free, prior and informed consent, are not binding as a matter of international or Canadian law.[58]

36. However, the Declaration is widely viewed as representing international consensus regarding the minimum set of rights to be accorded to Indigenous peoples.[59] Its provisions are built upon decades of work in the field, reflected in other human rights instruments and jurisprudence, and "decades of advocacy and struggle by Indigenous peoples themselves."[60] As already noted, the Declaration has been widely adopted by U.N. member states.[61]

[54] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 43; *Report of the Special Rapporteur* (2011), *supra* note 47 at paras. 81-83.

[55] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 43; *Report of the Special Rapporteur* (2011), *supra* note 47 at paras. 83-84.

[56] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 44.

[57] *Ibid.*

[58] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at paras. 38-40; *Report of the Special Rapporteur* (2011), *supra* note 47 at para. 68; *Report of the Special Rapporteur on the rights of indigenous people*, GA. 68th Sess., UN Doc. A/68/317 (2013) at para. 61; see also *Snuneymuxw First Nation v. School District No. 68*, 2014 BCSC 1173; *CAW-Canada, Local 444 v. Great Blue Heron Gaming Co.*, 2007 ONCA 814; *Hupacasath First Nation v. Canada (Foreign Affairs)*, 2013 FC 900; James Anaya, Symposium on Patrick Macklem's *The Sovereignty of Human Rights* (19 April 2016); Patrick Macklem, *The Sovereignty of Human Rights* (New York: Oxford University Press, 2015) at 135.

[59] *Report of the Special Rapporteur on the rights of indigenous people*, GA. 68th Sess., UN Doc. A/68/317 (2013) at para. 63.

[60] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at paras. 38-40; *Report of the Special Rapporteur* (2009), *supra* note 19 at paras. 40-41; *Report of the Special Rapporteur* (2011), *supra* note 47 at paras. 67, 69.

[61] *Report of the Special Rapporteur* (2011), *supra* note 47 at paras. 35, 67.

37. Further, since its enactment, the obligations of free, prior and informed consent contained in the Declaration have been incorporated into other instruments relating to private sector conduct. The United Nations Global Compact, the world's largest corporate sustainability initiative, includes the Declaration by reference among its principles.[62] The International Finance Corporation (IFC), the arm of the World Bank Group that offers investment, advisory and asset management services to encourage private sector economic development in developing countries, mandates compliance with the obligations of free, prior and informed consent in its Performance Standard 7: Indigenous Peoples. Any private sector client seeking to make an investment with the support of the IFC must therefore comply with these principles through the life of the project.[63] Similarly, the obligation of free, prior and informed consent has been incorporated into the Equator Principles, a financial industry benchmark for determining, assessing, and managing environmental and social risks in projects, through their alignment with the IFC Performance Standards.[64] An overwhelming majority of major financial institutions in Canada have adopted these principles, and annually report on their compliance with them.[65] The Equator Principles incorporate IFC Performance Standard 7 by reference.[66]

## Positions of the Government of Canada and the Truth and Reconciliation Commission

38. When the Declaration was adopted by the United Nations General Assembly in 2007, Canada, along with Australia, New Zealand and the United States, voted against it. Canada expressed concern that wording in the Declaration respecting Indigenous peoples' rights to the lands, territories and resources they traditionally owned, occupied or otherwise used, as well as the obligation of free, prior and informed consent, would conflict with domestic law.[67] Specifically, Canada expressed concern that these provisions in the Declaration would conflict with existing guarantees under section 35 of the *Constitution Act, 1982,* or that these and other provisions

[62] "Indigenous Peoples" *United Nations Global Compact,* online: United Nations Global Compact <https://www.unglobalcompact.org/what-is-gc/our-work/social/indigenous-people>.

[63] "Performance Standard 7: Indigenous Peoples" *International Finance Corporation* (1 January 2012), online: IFC <http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES>.

[64] Equator Principles (June 2013), *supra* note 12.

[65] "Equator Principles Association Members & Reporting," Equator Principles (June 2013), *supra* note 12.

[66] Equator Principles (June 2013), *supra* note 12 at p. 21.

[67] CBC News, "Canada votes 'no' as UN native rights declaration passes" *CBC News* (13 September 2007), online: CBC News <http://www.cbc.ca/news/canada/canada-votes-no-as-un-native-rights-declaration-passes-1.632160>

might call into question the finality of Canada's existing Aboriginal treaties and land claims agreements.[68]

39. Canada changed its position in 2010 and endorsed the Declaration, but qualified its endorsement by stating its view of the Declaration as a "non-legally binding aspirational document."[69] Canadian courts have held that the Declaration is not legally binding in Canada.[70] However, the new federal government has committed to the full implementation of the Declaration.[71] On May 9, 2016, Canada announced that it is formally removing its "permanent objector" status and confirmed plans to fully adopt and implement it.[72]

40. These changes are, in part, in response to the Final Report of the Truth and Reconciliation Commission of Canada, an independent Commission established by the federal government as part of the Indian Residential Schools settlement.[73] The Commission recommended the full implementation of the Declaration. The Commission's Calls to Action 43 and 44 call on federal, provincial, and territorial governments to fully adopt and implement the Declaration as the framework for broader reconciliation with Indigenous peoples, and to develop a national action plan and other concrete measures for that implementation.[74]

[68] *Ibid.;* CBC News, "Canada endorses indigenous rights declaration" *CBC News* (12 November 2010), online: <http://www.cbc.ca/news/canada/canada-endorses-indigenous-rights-declaration-1.964779>.

[69] "Canada endorses indigenous rights declaration" *CBC News* (12 November 2010), *Ibid.;* Indigenous and Northern Affairs Canada, "United Nations Declaration on the Rights of Indigenous Peoples" (9 May 2016), online: Government of Canada <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958>.

[70] *Snuneymuxw First Nation v. Board of Education – School District #68,* 2014 BCSC 1173; *Mississaugas of Scugog Island First Nation v. National Automobile, Aerospace, Transportation and General Workers Union of Canada.* 2007 ONCA 814; *Hupacasath First Nation v. Canada (Foreign Affairs),* 2013 FC 900.

[71] Liberal Party of Canada, "133. Priority: Respecting Aboriginal Rights" (2016), online: Liberal Party of Canada <https://www.liberal.ca/policy-resolutions/133-priority-respecting-Aboriginal-rights/>; Prime Minister of Canada Justin Trudeau, "Statement by Prime Minister on Release of the Final Report of the Truth and Reconciliation Commission" (15 December 2015), online: Prime Minister of Canada Justin Trudeau <http://pm.gc.ca/eng/news/2015/12/15/statement-prime-minister-release-final-report-truth-and-reconciliation-commission>.

[72] CBC News, "Canada removing objector status to UN Declaration on the Rights of Indigenous Peoples" *CBC News* (8 May 2016), online: CBC News: <http://www.cbc.ca/news/Aboriginal/canada-position-un-declaration-indigenous-peoples-1.3572777>; Indigenous and Northern Affairs Canada, News Release, "Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples" (10 May 2016), online: Government of Canada <http://news.gc.ca/web/article-en.do?mthd=advSrch&crtr.mnthndVl=&crtr.mnthStrtVl=&crtr.page=1&nid=1063339&crtr.yrndVl=&crtr.kw=indigenous&crtr.yrStrtVl=&crtr.dyStrtVl=&crtr.dyndVl=>.

[73] Though the Truth and Reconciliation Commission was formed by the federal government, it operated independently of government, does not bind any government, and directed many of its Calls to Action towards government.

[74] Truth and Reconciliation Commission, *supra* note 4 at 191 (Calls to Action 43 and 44). The role of government in facilitating consultation processes is discussed at paragraphs 104 to 111 below.

41. In its Call to Action 92, the Commission called upon the corporate sector in Canada to adopt the Declaration as a reconciliation framework and apply its principles, norms and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources.[75] The Commission stated that, while the duty to consult and accommodate is placed on the Crown, and therefore binds the federal and provincial and territorial governments, in practice, procedural elements of this duty may be delegated to "industry proponents seeking a particular development." It also noted that the business risk associated with the legal uncertainty surrounding the duty to consult has often motivated industry proponents to negotiate mechanisms to ensure that Indigenous peoples benefit directly from development in their territories.[76] The Commission stated that economic reconciliation involves working in partnership with Indigenous peoples so that their traditional lands and resources are developed in culturally respectful ways that give full recognition to their rights.[77] In the Commission's view, the only way to do this is by establishing constructive, mutually beneficial relationships.

42. While the federal government has now committed to the full implementation of the Declaration, it is not evident what precise changes to Canadian law may be required, if any.[78] This is a live issue currently being considered by governments across the country. On April 4, 2016, Romeo Saganash, the member of parliament from Abitibi-Baie-James-Nunavik-Eeyou, presented a private member's bill to the House of Commons to establish a collaborative process for the full implementation of the Declaration.[79] In announcing Canada's plan to implement the Declaration, Minister of Indigenous and Northern Affairs Carolyn Bennett stated, "Adopting and implementing the Declaration means that we will be breathing life into Section 35 of Canada's Constitution, which provides a full box of rights for Indigenous peoples."[80]

[75] Truth and Reconciliation Commission, *supra* note 4 at 306 (Call to Action 92).

[76] *Ibid.* at 302 n 273; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 53 ("Haida").

[77] Truth and Reconciliation Commission, *supra* note 4 at 305.

[78] As part of her apology to Indigenous Peoples in response to the Final Report of the Truth and Reconciliation Commission of Canada, on May 30, 2016, Ontario Premier Kathleen Wynne announced a series of initiatives to foster reconciliation with Indigenous peoples in Ontario, and a commitment to "work closely with Canada's federal government, whose commitments to reconciliation are encouraging and vital to our success." Office of the Premier, "Ontario's Commitment to Reconciliation with Indigenous Peoples" (30 May 2016), online: Government of Ontario <https://news.ontario.ca/opo/en/2016/05/ontarios-commitment-to-reconciliation-with-indigenous-peoples.html>.

[79] Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, 1st Sess., 42nd Parl., 2016.

[80] Indigenous and Northern Affairs Canada, News Release, "Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples" (10 May 2016), online: Government of Canada <http://news.gc.ca/web/article-en.do?mthd=advSrch&crtr.mnthndVl=&crtr.mnthStrtVl=&crtr.page=1&nid=1063339&crtr.yrndVl=&crtr.kw=indigenous&crtr.yrStrtVl=&crtr.dyStrtVl=&crtr.dyndVl=>.

43. It is notable that the Special Rapporteur's 2014 report on "The situation of indigenous peoples in Canada" commended Canada for its "well-developed legal framework" and several "policy initiatives that in many respects are protective of indigenous peoples' rights."[81] The key areas of concern highlighted by the Special Rapporteur are those well-known to Canadians and in large part acknowledged by Canada: the well-being gap between Indigenous and non-Indigenous people; persistently unresolved claims to treaty and Aboriginal rights; the vulnerability of Indigenous women and girls to abuse; and distrust between Indigenous peoples and the provincial and federal governments.[82] He also commented on ways to improve the consultation process, emphasizing in particular the need to ensure that the consultation process begins at earlier stages of project development.[83]

44. Notably, the Special Rapporteur did not focus significant attention on any differences in scope that may exist between guarantees under Canadian law and the provisions of the Declaration. However, he expressed the view that, as a general rule, resource extraction projects should not proceed without both adequate consultation and the free, prior and informed consent of the Indigenous peoples concerned.[84]

[81] *Report of the Special Rapporteur on the rights of indigenous people*, HRC, 27th Sess., UN Doc. A/HRC/27/52/Add.2 (2014) at para. 6 ("*Report of the Special Rapporteur, HRC* (2014)").

[82] *Ibid.* at 1.

[83] *Ibid.* at paras. 58-77, 98.

[84] *Ibid.* at para. 98.

PART III

# ABORIGINAL RIGHTS IN CANADA

45. Roughly in parallel with the evolution of the obligation of free, prior and informed consent at the international level, Canada's courts have developed a robust set of constitutional principles respecting Aboriginal rights, including the duty to consult and accommodate. From the Supreme Court's 1973 cornerstone Aboriginal rights decision in *R v. Calder*, through the adoption of section 35 of the *Constitution Act, 1982* giving constitutional protection to Aboriginal and treaty rights, to the cases following the Supreme Court's 2004 articulation of the modern duty to consult, and if appropriate, accommodate in *Haida Nation v. British Columbia*, Canadian courts have developed a significant body of jurisprudence regarding Indigenous consultation.

## Sources of Aboriginal title and other Aboriginal rights under Canadian law

46. Aboriginal title and other rights arise from one of two sources: treaties with the Crown, or historical practice.

47. From 1701, the British Crown entered into treaties with Indigenous peoples to encourage peaceful relations between Indigenous peoples and European settlers in the lands that would become Canada.[85] The Royal Proclamation, 1763 acknowledged the prior entitlements of Indigenous peoples in North America, which "required the Crown to treat with them and obtain their consent before their lands

could be occupied."[86] Accordingly, the Royal Proclamation, 1763 forbade settlement unless the Crown had first established treaties with the Indigenous peoples in the area.[87] In 1996, the Royal Commission on Aboriginal Peoples emphasized this point: "Indian land could be purchased for settlement or development... lands could be surrendered only on a nation-to-nation basis, from the Indian nation to the British Crown, in a public process in which the assembled Indian population would be required to consent to the transaction."[88]

48. These treaties, and their modern equivalent land claims agreements, often but not always surrendered Aboriginal title to lands in exchange for certain rights over the surrendered lands and the creation of reserves.[89]

49. However, many treaties did not comprehensively address the division of rights between Aboriginal peoples and the Crown, and the scope and interpretation of others is debated. Much of modern-day British Columbia, Newfoundland, Nunavut, Quebec and Yukon was never subject to Aboriginal treaty.[90] The "peace and friendship" treaties of the Maritimes "did not involve First Nations surrendering rights to... lands and resources."[91] In 1973, the Supreme Court, in recognition that long before Europeans settled in North America, Indigenous peoples occupied the land in organized, distinctive societies with their own social and political structures, held that those pre-existing Indigenous laws and interests were not automatically extinguished by the Crown's assertion of sovereignty, but were absorbed into the

[85] Indigenous and Northern Affairs Canada, "Treaties with Aboriginal people in Canada" (15 September 2010), online: Government of Canada <http://www.aadnc-aandc.gc.ca/eng/1100100032291/1100100032292>.

[86] Right Honourable Beverly McLachlin, P.C., Chief Justice of Canada, "Aboriginal peoples and Reconciliation," (2003) 9 Canterbury L. Rev. 240 ("McLachlin, Aboriginal peoples". See also *Calder, supra* note 5; *R. v. Van der Peet*, [1996] 2 S.C.R. 507 at para. 110-112 (*"Van der Peet"*); *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 200 (*"Delgamuukw"*).

[87] McLachlin, Aboriginal peoples, *supra* note 86; See also *Calder, supra* note 5; *Van der Peet, supra* note 86 at para. 110-112; *Delgamuukw, supra* note 86 at para. 200. See also *Canadian Charter of Rights and Freedoms, s. 25(2), Part I of the Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. The Truth and Reconciliation Commission's Call to Action 45 calls upon the Government of Canada to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown building on the nation-to-nation relationship set out in the Royal Proclamation of 1763. See Truth and Reconciliation Commission, *supra* note 4 at 199-200.

[88] *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol. 1 (Ottawa: Canada Communications Group, 1996) at 209-210.

[89] Jack Woodward, Q.C., *Native Law*, looseleaf (Toronto: Thomson Reuters, 2016) at para. 5:210.

[90] Indigenous and Northern Affairs Canada, "Maps of Treaty-Making in Canada," online: Government of Canada <http://www.aadnc-aandc.gc.ca/eng/1100100032297/1100100032309>

[91] Indigenous and Northern Affairs Canada, "Peace and Friendship Treaties," online: Government of Canada <https://www.aadnc-aandc.gc.ca/eng/1100100028589/1100100028591>.

common law as rights.[92] Those rights could only be extinguished by explicit acts of the Crown displacing Aboriginal rights or interests. Unless extinguished, these Aboriginal rights survived colonization and continue to operate.

50. Aboriginal rights that survived until 1982 without being extinguished are now protected under section 35 of the *Constitution Act, 1982,* which "recognized and affirmed" "existing Aboriginal and treaty rights."[93] These rights are held by First Nations, Inuit and Métis peoples, and cannot be extinguished.[94]

51. Whereas courts were previously reluctant to recognize Aboriginal and treaty rights, constitutionalization has given greater weight to their recognition and enforcement. The obligation on governments in Canada to consult and, if appropriate, accommodate the rights and interests of Indigenous peoples has developed through the jurisprudence interpreting section 35 since its enactment. As described below, this obligation differs somewhat in respect of rights that have been claimed but have not yet been proven or settled, and rights that have already been proven or established by treaty.

## Aboriginal title and other rights claimed but not yet proven

52. When the government has real or constructive knowledge of the potential existence of an Aboriginal right or title claim, and contemplates conduct that might adversely affect it, a duty to consult the affected Indigenous people and potentially accommodate its interests arises.[95] This duty is held by the Crown, and therefore falls on all levels of government in Canada. The level of government implicated in any Aboriginal consultation process will depend on the context in which the need for consultation arises and the jurisdictional authority that level of government exercises.

53. The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably to achieve "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown."[96]

[92] *Calder, supra* note 5.

[93] *Constitution Act, 1982,* s. 35, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. s. 35.

[94] *R v. Sparrow,* [1990] 1 S.C.R. 1075 ("*Sparrow*").

[95] *Haida, supra note 76 at para. 35.*

[96] *Van der Peet, supra* note 86 at para. 31; *Delgamuukw, supra* note 86 at para. 186; *Haida, supra* note 76 at para. 17.

54. **The honour of the Crown gives rise to different obligations depending on the circumstances.** Where Aboriginal rights or title have been asserted, but have not been defined or proven, the honour of the Crown requires negotiations leading to a just settlement of Aboriginal claims. Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty and define the rights guaranteed by section 35 of the *Constitution Act, 1982*.[97] If a treaty has not been concluded, the Crown must act honourably in the process of defining Aboriginal rights and in reconciling them with other rights and interests. This implies a duty to consult and, if appropriate, accommodate the interests of Indigenous peoples where they have asserted rights which have not yet been resolved.[98]

55. **The content of the duty to consult also varies depending on the circumstances.** The content of the duty to consult can range from a minimum duty to discuss important decisions where the potential infringement of rights is less serious or relatively minor, through exchanges that are "significantly deeper than mere consultation... required in most cases," to "full consent of [the] Aboriginal nation... on very serious issues."[99] In all cases, the Crown must act with good faith in the aim of substantially addressing the Indigenous people's concerns.[100]

56. The degree of consultation required is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title claim, and to the seriousness of the potentially adverse effect on the right or title claimed.[101] Where the claim to title is weak, the right limited, or the potential infringement is minor, the only duty on the Crown may be to give notice, disclose information and discuss any issues raised in response.[102] At the other end of the spectrum lie situations where a strong case for the claim is put forward, the right and potential infringement is significant to the Indigenous community, and the risk of non-compensable damage is high. In these cases, greater consultation aimed at finding a satisfactory solution is required.[103] Consultation in this circumstance may require the opportunity to make submissions, formal participation in the decision-making process from early stages

[97] *Sparrow, supra* note 94 at 1105-1106; *Haida, supra* note 76 at para. 20.

[98] *Haida, supra* note 76 at paras. 20, 25.

[99] *Ibid.* at para. 24.

[100] *Ibid.* at paras. 41-42.

[101] *Ibid.* at para. 39.

[102] *Ibid.* at para. 42.

[103] *Ibid.* at para. 44.

of the project, and provision of written reasons to show that Indigenous concerns were considered and what impact they had.[104] The government may also wish to adopt mediation regimes involving impartial decision-makers in contexts involving complex or sensitive issues.[105]

57. **When the duty to accommodate Aboriginal interests arises.** Where a strong case exists for the Aboriginal title or right claim, and the consequences of the government's proposed decision may adversely affect it in a significant way, addressing Indigenous concerns may require that steps be taken to avoid irreparable harm or to minimize the effects of infringement until the underlying claim to Aboriginal rights is finally resolved.[106] However, this is not a veto for Indigenous peoples, which may only be appropriate in certain cases of established rights.[107]

## Aboriginal title and other rights once proven

58. Aboriginal title and other rights, once established by the courts or treaty, provide the highest degree of control over land. An Aboriginal group's consent will generally be required unless certain conditions are met, as discussed below.

59. **Aboriginal title confers the right to exclusive use and occupation of the land, to reap the benefits flowing from the land, and the right to proactively manage the land.**[108] The use of Aboriginal title lands is not confined to traditional purposes. However, as a collective right held by the group for present and future generations, the land cannot be put to uses that are incompatible with the collective and ongoing nature of the right. The land cannot be alienated, developed or misused in a way that would substantially deprive future generations of its benefits.[109]

60. The right to control the land conferred by Aboriginal title means that governments

[104] *Ibid.*

[105] *Ibid.*

[106] *Ibid.* at paras. 46-47.

[107] *Ibid.* at para. 48.

[108] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 at paras. 2, 67, 73 (*"Tsilhqot'in Nation"*); *Delgamuukw*, *supra* note 86 at para. 117.

[109] *Tsilhqot'in Nation*, *supra* note 108 at paras. 67, 73, 74; 1. Certain treaties give the Crown the right to "take up" additional land. However, there is a point at which taking up additional land would infringe other rights guaranteed by the treaty, because it may not leave enough land untaken to meaningfully exercise other Aboriginal treaty rights; see *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69.

and others seeking to use the land must obtain the consent of the Aboriginal title holders.[110]

61. **If the Aboriginal people does not consent to the proposed land use, the government maintains a residual right to infringe the Aboriginal title.** Such an infringement is only permitted if justified under section 35 of the *Constitution Act, 1982* on the basis that it is necessary for the broader public good.[111] This is a stringent test, not easily met.

62. If the Crown chooses to proceed with a measure absent the relevant Aboriginal people's consent, the government must demonstrate three elements. First, the Crown must have discharged the same duty to consult and accommodate as applies in respect of unproven rights, described above. However, the required level of consultation and, if appropriate, accommodation in respect of a proposed project is greatest where title has been established.[112]

63. Second, the government's actions must also be backed by a compelling and substantial objective, considered from the Aboriginal perspective as well as from the perspective of the broader public.[113] Courts have been hesitant to limit the range of objectives that can justify infringement in the abstract. While few cases have addressed the issue, the Supreme Court has indicated that a broad range of projects, including commercial ventures and infrastructure developments, could satisfy this factor if the public interest is significant enough.[114]

64. Third, the government must show that the proposed infringement is consistent with the Crown's fiduciary duty toward Aboriginal peoples. The Crown's underlying right in the land is held for the benefit of the Aboriginal group. When the government seeks to exercise this underlying right in a manner that infringes Aboriginal rights, the government must act in a way that respects the fact that Aboriginal title is a group interest that inheres in present and future generations. An infringement cannot be justified if it: (a) would substantially deprive future generations of the benefit of the land; (b) would disproportionately infringe the right in a manner that is not rationally connected to the achieve the objective; (c) would cause the right to be infringed more than necessary to achieve the objective sought (minimal impairment); or (d)

[110] *Tsilhqot'in Nation, supra* note 108 at para. 76.

[111] *Ibid.* at paras. 76-77.

[112] *Ibid.* at para. 79.

[113] *Ibid.* at para. 81.

[114] *Ibid.* at para. 83.

the benefits of the infringement would be outweighed by its adverse effects.[115]

65. While this issue has not been explored to the same degree in the context of other established Aboriginal rights, an argument has been raised that the same reasoning in respect of established Aboriginal title may apply to other established Aboriginal rights, depending on the degree to which the rights at issue may be affected.[116] If this argument is correct, once Aboriginal rights have been established, the Crown may need to seek the consent of the rights-holding Aboriginal group with respect to uses of land that would substantially impair those rights, or, if consent is not obtained, justify the infringement using the same or a similar infringement analysis to that set out above.[117]

## Consultation and accommodation policies of governments in Canada vary considerably

66. The federal government, all ten provinces, and the Northwest Territories have established Aboriginal consultation policies to implement the Crown's duty to consult and accommodate. The Yukon and Nunavut, while providing less formal guidance, have not established formal policies. Altogether, these policies vary considerably. Some polices are accompanied by general or industry-specific implementation guidelines.[118] British Columbia and Nova Scotia have developed guidance on the role of the business sector in the consultation process.[119] Several explicitly address the treatment of Aboriginal title.[120] Finally, some policies provide for funding for Indigenous peoples to participate in the consultation process, either from the

[115] *Ibid.* at para. 87.

[116] Jack Woodward, Q.C., *Native Law,* looseleaf (Toronto: Thomson Reuters, 2016) at para. 5:2360.

[117] *Ibid.*

[118] Government of Manitoba, "Procedures for Crown Consultation with Aboriginal Communities on Mineral Exploration – Mineral Resources Division, Manitoba Science, Technology, Energy and Mines," online: Government of Manitoba <http://www.manitoba.ca/iem/mines/procedures/pdfs/procedures_mineralexploration.pdf>; Government of Manitoba, "Procedures for Crown Consultation with Aboriginal Communities on Mine Development Projects – Manitoba, Mineral Resources Division, Manitoba Science, Technology, Energy and Mines," online: Government of Manitoba <http://www.manitoba.ca/iem/mines/procedures/pdfs/procedures_minedevelopment.pdf>; Government of Saskatchewan, "First Nations and Métis Consultation Policy Framework" (June 2010), online: Government of Saskatchewan <https://www.saskatchewan.ca/~/media/files/government%20relations/first%20nations/consultation%20policy%20framework.pdf> ("Saskatchewan, Consultation Policy").

[119] British Columbia Environmental Assessment Office, "Guide to Involving Proponents When Consulting First Nations" (December 2013), online: Government of British Columbia <http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations/proponents_guide_fn_consultation_environmental_assessment_process_dec2013.pdf>; Nova Scotia Office of Aboriginal Affairs, "Proponents' Guide: The Role of Proponents in Crown Consultation with the Mi'kmaq of Nova Scotia" (November 2012), online: <https://www.novascotia.ca/nse/ea/docs/ea-proponents-guide-to-mikmaq-consultation.pdf>.

government or the private sector.[121] These policies demonstrate the type of context-specific variation in approaches to fulfilling consultation obligations that could also apply to the application of the principle of free, prior and informed consent.

67. **Degree of Specificity:** The consultation policies and guidelines of Canada, Alberta, British Columbia, Saskatchewan, Manitoba, and Nova Scotia offer the most detailed and practical guidance about how to fulfill the Crown's duty to consult. Canada's guidelines include a "step-by-step, chronological" approach outlining detailed relevant considerations to consultation at each stage.[122] Saskatchewan and Alberta's materials provide consultation matrixes with sample consultation measures, and anticipated timelines for Aboriginal and government responses.[123] British Columbia outlines operating guidelines for each stage of the consultation and accommodation process.[124] In contrast, the policies of Ontario, Quebec, New Brunswick, Prince Edward Island, Newfoundland, and the Northwest Territories provide broad policy goals and general factors to be considered, but do not provide as much concrete guidance.

68. Some provincial policies, such as those of British Columbia, Alberta, Manitoba, and Ontario, also provide sector- or industry-specific guidelines with consultation guidance tailored to particular contexts.[125]

69. The policies also differ with respect to the level of detail they provide in describing how to implement the duty to accommodate. Only some policies offer specific examples of types of accommodation.[126]

[120] See e.g. Government of Nova Scotia, "Government of Nova Scotia Policy and Guidelines: Consultation with the Mi'kmaq of Nova Scotia" (April 2015), online: Government of Nova Scotia <http://novascotia.ca/abor/docs/April%202015_GNS%20Mi'kmaq%20Consultation%20Policy%20and%20Guidelines%20FINAL.pdf> ("Nova Scotia, Consultation Policy").

[121] Bill 22, *Aboriginal Consultation Levy Act*, 1st Sess., 28th Leg., Alberta, 2013 (assented to May 23, 2013), online: Legislative Assembly of Alberta <http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_28/session_1/20120523_bill-022.pdf>.

[122] Indigenous and Northern Affairs Canada, "Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult – March 2011" (March 2011), online: Government of Canada <http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675>.

[123] Alberta Indigenous Relations, "The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management" (28 July 2014), online: Government of Alberta <http://indigenous.alberta.ca/documents/First_Nations_Consultation_Guidelines_LNRD.pdf.pdf>; Saskatchewan, Consultation Policy, *supra* note 118.

[124] Province of British Columbia, "Updated Procedures for Meeting Legal Obligations When Consulting First Nations: Interim" (7 May 2010), online: Province of British Columbia <http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations/legal_obligations_when_consulting_with_first_nations.pdf> ("British Columbia, Updated Procedures").

[125] See e.g. British Columbia, Updated Procedures, *supra* note 124.

[126] *Ibid.*

70. Prince Edward Island and Nova Scotia have each entered into consultation agreements with the Mi'kmaq and the federal government outlining a preferred, but not exclusive, consultation protocol.[127] Certain modern treaties with Aboriginal peoples also provide guidance on consultation processes.[128]

71. **Treatment of Aboriginal title.** Some guidance documents explicitly discuss unique considerations in respect of Aboriginal rights or title claims.[129] Others seem to approach this topic implicitly. This may reflect the treaty status of a province's lands. For example, Saskatchewan's policy excludes Aboriginal title, stating, "The Government does not accept assertions by First Nations or Métis that Aboriginal title continues to exist with respect to either lands or resources in Saskatchewan. Accordingly, decisions claimed to adversely affect Aboriginal title are not subject to this policy."[130]

72. **Funding for Aboriginal participation in the process.** Some governments' policies require that the cost of consultation for Indigenous peoples be borne by project proponents. For example, the Newfoundland and Labrador policy requires proponents to bear the full cost of consultation. Alberta's *Aboriginal Consultation Levy Act* requires proponents to pay to the provincial government levies to be used for grants to Indigenous peoples to participate in the consultation process.[131] Other provinces like Manitoba and Ontario have made commitments to funding Indigenous participation themselves.[132] Others are silent on this issue.

[127] Indigenous and Northern Affairs Canada, "Mi'kmaq - Prince Edward Island - Canada Consultation Agreement" (2012), online: Government of Canada <https://www.aadnc-aandc.gc.ca/eng/1344522721221/1344522886022>.

[128] See e.g. James Bay and Northern Quebec Agreement (1975); Little Salmon/Carmacks First Nation Final Agreement (1997); Nisga'a Final Agreement (1999); Tsawwassen First Nation Final Agreement (2009); Maa-nulth Final Agreement (2009).

[129] See e.g. British Columbia, Updated Procedures, *supra* note 124; Indigenous and Northern Affairs Canada, "Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult – March 2011" (March 2011), online: Government of Canada <http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675>; Nova Scotia, Consultation Policy, *supra* note 120; Ministry of Northern Development and Mines Ontario, "Consultation and Arrangements with Aboriginal Communities at Early Exploration" (September 2012), online: Government of Ontario <http://www.mndm.gov.on.ca/en/mines-and-minerals/mining-act-policies-and-standards>; Interministerial Support Group on Aboriginal Consultation, "Interim Guide for Consulting the Aboriginal Communities" (2008), online: Gouvernement du Québec <https://www.autochtones.gouv.qc.ca/publications_documentation/publications/guide_inter_2008_en.pdf>; Aboriginal Affairs Secretariat, "Government of New Brunswick Duty to Consult Policy" (November 2011), online: Province of New Brunswick <http://www2.gnb.ca/content/gnb/en/departments/Aboriginal_affairs/duty_to_consult.html>; Government of Prince Edward Island, "Provincial Policy on Consultation with the Mi'kmaq" (3 March 2014), online: <http://www.gov.pe.ca/photos/sites/Aboriginalaffairs/file/Provincial%20Policy%20on%20Consultation%20with%20the%20Mikmaq%20-%20Revised%20March%203,%202014.pdf>.

[130] Saskatchewan, Consultation Policy, *supra* note 118.

[131] Bill 22, *Aboriginal Consultation Levy Act*, 1st Sess., 28th Leg., Alberta, 2013 (assented to May 23, 2013), online: Legislative Assembly of Alberta <http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_28/session_1/20120523_bill-022.pdf>.

[132] Ministry of Northern Development and Mines for Ontario, "Aboriginal Participation Fund" (15 April 2016), online: Government of Ontario <http://www.mndm.gov.on.ca/en/mines-and-minerals/Aboriginal-participation-fund>; Government of Manitoba, News Release, "Consultation Participation Fund Announced for Aboriginal Communities" (25 January 2010), online: Government of Manitoba <http://news.gov.mb.ca/news/index.html?item=7654>.

PART IV

# TOWARDS A NEW RELATIONSHIP TO FACILITATE RECONCILIATION

73. The commonalities and differences between the principles of free, prior and informed consent in the Declaration and the duty to consult and accommodate in Canadian law have been the subject of much analysis and discussion. Both are procedural obligations that facilitate a process aimed at reconciling Aboriginal rights and interests with the wider societies of which they form a part. Both provide guidance for an engagement process to be conducted prior to government action that may affect Aboriginal rights. Both establish that the nature and extent of this process depends on the context at hand.

74. On balance, the two are similar in scope and effect and are fundamental bases for Indigenous involvement in projects. We would like to turn in the balance of this paper to specific examples and principles which we feel can help guide the way forward in practice. In this part of the paper, we will talk more about partnerships, engagement, participation, and address substantive issues with and impacts of the project, with less focus on consultation and accommodation. The latter nomenclature is rooted in the Canadian jurisprudence; while we certainly believe that parties must comply with the jurisprudence, we suggest that an approach that is focused on relationships and parties' underlying interests from the outset—rather than positions

or strict legal rights—provides the foundation for meaningful engagement and sets the stage for a successful outcome for all involved.

75. We recommend an approach to meeting the letter and spirit of domestic and international standards by focusing on the following elements.

(a) **Relationship:** The focus must be on building a long-term relationship between the government, project proponents[133] and Indigenous peoples, grounded in mutual respect and trust, and not on merely completing a check-list.

(b) **Model of partnership:** The model of partnership, in which multiple groups come together for mutual benefit and to accommodate each other's interests, should govern the project.

(c) **Procedural and substantive participation:** Indigenous peoples should have the opportunity to meaningfully participate in all aspects of the project. This participation has both procedural and substantive dimensions.

(d) **Involvement of government to align incentives and facilitate:** Governments by necessity are involved in the consultation process, as the duty is ultimately theirs. Governments should also help align project proponents' and Indigenous peoples' incentives so that they can more easily find common ground.

76. We describe each of these elements in more detail below.

## Building a relationship requires an interests-based approach

77. Engagement with Indigenous peoples on a particular project should be approached from the perspective of relationship-building—as between the Indigenous peoples concerned, the relevant governments, and the project proponent.

78. This relationship must be founded on mutual respect and trust, the importance of which cannot be overstated. Mutual respect and trust cannot simply be proclaimed. They must be built on positive, ongoing and mutual conduct and action through meaningful engagement. Where established, this foundation allows a deeper appreciation of all parties' interests in the context of a discussion that will likely address sensitive issues. The government and project proponent must understand that, in some way, all Indigenous consultations are related to Canada's historical treatment of Indigenous peoples and are part of the ongoing process of reconciliation. Acceptance and respect of this basic tenet will allow for the building of a dialogue and relationship that can lead to a successful outcome for all parties.

[133] We note that many project proponents are either First Nations or are partnerships involving First Nations or Indigenous entities.

79. A good faith engagement process in most circumstances requires parties to meaningfully understand each other's interests over the short, medium and long term. Any engagement process should begin by focusing on the parties' interests, rather than an analysis of what rights are strictly held at law and the degree engagement that is required as a result. While the law forms the backdrop to the process and may inform the nature of the ultimate process adopted and the outcomes sought, it is generally counter-productive for parties to approach consultation seeking to do no more than the minimum that is required. Likewise, an inflexible "positional" or "hard bargaining" attitude to engagement, without regard to underlying interests and their relative significance, is unlikely to assist any party. A good faith attempt to genuinely understand and, to the extent possible, address each other's interests, will better facilitate a relationship aimed at a positive outcome.

80. While domestic and international consultation obligations apply to Canadian governments, the project proponent also has a significant role. In practice, consultations in respect of specific projects are carried out in whole or in part by private sector project proponents. An approach to consultation focused on an interests-based relationship best enables parties to take the long-term view necessary to facilitate reconciliation between Indigenous peoples and the Crown.

## The model of partnership

81. In designing an approach to achieve an interests-based relationship, it may be beneficial for project proponents and Indigenous peoples to approach each other with the relationship of a partnership in mind.

82. This does not necessarily mean partnership in the legal sense, but it does mean a relationship that includes the elements of good faith, transparency, collaboration, and recognition of each other's capacities and constraints. Such a partnership should be understood as a process in which two or more groups come together with the aim of mutual benefit in a manner that addresses each party's unique set of interests. A partnership mindset encourages all parties to consider Indigenous peoples not as the "recipients" of consultation but as partners in the design, operation and success of the project.

83. A partnership mindset encourages all parties to consider each other's interests in a more fundamental manner and with a longer-term view, building a relationship that respects the underlying Indigenous rights, interests and dignity involved.

## Meaningful participation

84. Flowing from the mindset of partnership, what does a good faith and meaningful engagement process look like in practice? There is no cookie-cutter model to follow; any engagement process is context-specific. Both Canadian and international law clearly indicate that this in part depends on the nature of the Aboriginal rights

at issue and the potential harm that the proposed project activity would cause. In practice, it also depends on the history, capacity, challenges, issues and opportunities of the particular Indigenous peoples that are involved.

85. With this context-specific reality always front of mind, a mindset of partnership enables us to set out certain guidelines or best practices.

**Procedural participation**

86. In our experience, four principles should guide any relationship among government, project proponents and Indigenous peoples in relation to a project: (a) there must be engagement regarding the procedure to be followed; (b) there must be engagement from an early stage (where possible) and on an ongoing basis; (c) Indigenous peoples must be provided with sufficient information for a meaningful process; and (d) resources (both financial and human) will be required to facilitate the process.

87. At the outset of the project, representatives of all Indigenous peoples that may be affected should be contacted through their own representative institutions, and should be engaged in a dialogue regarding the proposed project and the type of engagement process they view as warranted. This can be a difficult and complex process, as there may not be a single set of representatives or institutions to address. Ideally, the procedure itself would be the product of consensus.[134] Though it may be difficult, finding consensus on the procedure is likely to engender a climate of confidence and mutual respect, both in the process itself and in the Indigenous people's ongoing relationship with the project proponent and the Crown.

88. In many cases, especially those with significant potential impact on Indigenous rights, it will be important to build a relationship with affected Indigenous peoples from an early stage of the project. They should be involved in the project's conception and design and concrete mechanisms should be in place for input from Indigenous traditional knowledge, oral history, and ways of life and experience.

89. Because circumstances often change, events arise, projects evolve and project timelines usually unfold over a number of years, the process will likely need to continue throughout subsequent stages of the project's design, regulatory approvals, construction, operation and decommissioning, as needed. All parties should be willing on an ongoing basis to meaningfully address issues as they arise or become known.

90. Indigenous peoples must be provided with information about all aspects of

[134] *Report of the Special Rapporteur, HRC* (2009), *supra* note 35 at para. 51.

the project that may affect them. This may include the preparation and review of environmental and social impact studies, as well as an assessment of how the project might affect the rights and interests of the Indigenous peoples concerned.[135] Without sufficient information it will not be possible to have an informed process, and that process will likely suffer a deficit of legitimacy.

91. However, in any project there is a tension between completeness of information and constraints on what can be known. It must be recognized that more information can always be obtained, and more studies can be done. The question to be asked is what information is necessary for Indigenous peoples to meaningfully engage in the process on an informed basis, bearing in mind their rights and interests.

92. It is also important to emphasize that engagement is a two-way process, involving mutual interaction and exchanges of information between project proponents and Indigenous peoples. Inasmuch as project proponents must share all relevant information, they must also listen to Indigenous peoples with a mind that is open to accommodating their interests and concerns. An engagement process will be most effective where Indigenous peoples demonstrate significant commitment to sharing their views as well.

93. The project proponent should be mindful that, though some Indigenous peoples in Canada are well-resourced, most are among the most marginalized segments of the Canadian population. This marginalization is a result of precisely the same historical disadvantages and disentitlements underlying the imperative of facilitating reconciliation between Indigenous peoples and the Crown. These same groups cannot always be expected to have the resources necessary to engage in a consultation process as an equal to the project proponent or the Crown.

94. In this context, meaningful engagement may require the provision of financial, technical, legal or other resources (including translation into local Indigenous language(s)). While primary responsibility for addressing this asymmetry lies with the Crown, project proponents must nonetheless be aware of this issue and may be required to take steps to remedy it. The provision of resources to facilitate engagement will often help facilitate project-related collaboration, as well as building a longer-term relationship that helps achieve reconciliation.

95. Many successful engagements that we have been involved with have involved an up-front articulation of shared foundational principles. While this can be a time-consuming exercise, if done properly, it can clarify expectations and set parties up for success. Such engagements that we have seen have included: recognition and affirmation of constitutional and treaty rights; a commitment to openness and

[135] *Ibid.* at para. 53.

transparency; a commitment from senior-level individuals involved in the process to mutual respect and understanding, to participation in and accountability to the process, to meaningful participation of Indigenous peoples in the project, and to a positive and long-term relationship; establishment of a negotiations committee and working groups; and funding mechanics. These principles should be formalized in a written document that, while not necessarily intended to create legal or justiciable rights, serves to guide each party's conduct.

96. It can also be effective if parties are able to reach a high-level agreement regarding the applicable reasonable timelines, so as to avoid unrealistic expectations, on the one hand, and on the other hand, to set expectations regarding the process and avoid project fatigue.

### Substantive participation

97. Once procedural principles are agreed to, parties find it easier to focus on the specific details of the project, their ongoing relationship, and Indigenous peoples' substantive participation. Substantive participation can, for discussion purposes, be grouped into two main areas: impact mitigation and sharing of benefits.

98. Measures to safeguard or minimize the impact of the project on Indigenous peoples may be a crucial substantive element to a successful project. The Special Rapporteur has noted that attention should be paid to impacts on the environment, health, economic activities the Indigenous peoples undertake on the land, and places with special spiritual or historical significance.[136] The project proponent and the Indigenous peoples concerned may want to design mechanisms for monitoring these impacts over the life of the project and a procedure to remedy significant harms.[137]

99. A true partnership between Indigenous peoples and project proponents that respects Aboriginal rights in land, results in some form of sharing in the benefits of the project. The Special Rapporteur is one of many commentators to highlight the need to depart from the traditional model of project development in which Indigenous peoples see little control over and benefit from projects on their lands.[138]

100. Project proponents and Indigenous people have aligned their interests in a variety of areas to achieve successful and enduring relationships and projects. These

[136] *Report of the Special Rapporteur, HRC* (2013), *supra* note 40 at para. 73.

[137] *Ibid.*

[138] *Ibid.* at para. 76; See e.g. Boreal Leadership Council, "Free, Prior, and Informed Consent in Canada" (September 2012), online: Boreal Leadership Council <http://borealcouncil.ca/wp-content/uploads/2013/09/FPICReport-English-web.pdf>; Truth and Reconciliation Commission, *supra* note 4 at 305-306.

include: socioeconomic matters; economic benefit and revenue sharing; project involvement, management and decision-making; skills training and education initiatives; and employment and procurement opportunities.

101. While there is no "one-size-fits-all" partnership arrangement between project proponents and Indigenous peoples, in our experience Indigenous peoples and project proponents have sought to address some or all of the following issues: equity participation levels; funding of equity, including loans to Indigenous partners to fund their contributions; project layout, design and routing; incorporation of traditional knowledge; recognition of cultural values; impact on the environment, ongoing environmental monitoring and protection, and decommissioning planning; decision-making regarding issues such as project budget, schedule, debt financing; entering into material contracts; and assignment of responsibility for and participation in various permitting and other regulatory procedures.

102. In addition, projects that we have been involved with which have successfully engaged and involved Indigenous people often incorporated an explicit and detailed delineation of roles and responsibilities among the different parties involved, including the project proponent, Band Chief and Council, Economic Development Office, individual Indigenous people, and governments.

103. Where the foundational principles discussed at paragraphs 95 and 96 have been agreed upon in advance, parties are better placed to address these matters. In so doing, they expose their respective interests and objectives, and begin the hard work of relationship-building.

## Government's role in facilitating engagement

104. The mindset of partnership in approaching an interests-based consultation process facilitates both the Crown's compliance with its legal duty to consult and accommodate, as well as the commitments that many corporations have voluntarily undertaken. Governments should play a role in consultation, in particular, by: (a) helping align parties incentives to reach mutual agreement; (b) providing guidance on the appropriate form of consultation; and (c) resolving outstanding Aboriginal rights and title claims in a manner that clarifies rights and provides a foundation for other mutually beneficial relationships.

105. In our experience, project proponents and Indigenous peoples find it useful to consider what constructive role government may play in the particular consultation process they face. Governments are uniquely empowered to align incentives for both project proponents and Indigenous peoples so that they may reach mutually beneficial agreement. For example, in Ontario, the renewable energy procurement program provides an economic benefit (in the form of an increased purchase price) for electricity generated from projects with a specified level of Indigenous involvement in the project. In addition, other incentives may be used to further align

the consultation process, including by providing data, studies and other support to the information-gathering processes and by providing technical expertise (or funding to retain such expertise) to Indigenous peoples. Governments should actively embrace this role and do so more often.

106. Where the scale of a project is large or involves significant impact on Aboriginal rights and interests, it can be effective for the applicable government to negotiate an agreement with the Indigenous people(s) involved setting out each other's mutual obligations and responsibilities in the consultation process. Such agreements, rather than outlining specific roles for parties, rights, impacts or benefits, serve from the outset to establish common principles on which the consultation process will be founded. These agreements often explicitly highlight the parties' willingness and commitment to forging a new positive relationship, founded on mutual respect, understanding, participation, accountability, and balancing of interests. While it may be useful for private sector project proponents to undertake a similar exercise, the history of Indigenous peoples in Canada and their nation-to-nation relationships with the Crown provides governments, depending on the context, with a useful role to play in laying the foundation for significant consultation and accommodation exercises, depending on the context.

107. Governments should also do more to set expectations regarding the appropriate form of consultation in a given context and to determine when the duty has been met. We would encourage Canadian governments to provide context-specific advice or guidance in individual consultation processes to avoid significant ambiguity for project proponents and Indigenous peoples alike.

108. As discussed, the federal, provincial and territorial governments have developed differing policies in respect of the duty to consult and accommodate. Ideally, these governments would negotiate a joint consultation and accommodation policy to guide private sector partners and Indigenous peoples alike in approaching the consultation process. This does not mean that all consultation and accommodation policies must be uniform; they will vary by necessity in response to local context, the Indigenous peoples involved, the applicable treaties (if any), the particular rights an Indigenous people holds, and other factors. However, the lack of consultation policies in some jurisdictions, and the practical guidance provided by certain others, demonstrates that more could be done to ensure that these policies emanate from a common framework and provide the guidance necessary to effectively facilitate interests-based consultation. While it may be aspirational, the federal government's stated commitment to implement the Declaration in Canada could include an effort to develop such a framework with the provinces and territories.

109. Finally, governments have played and continue to play a foundational role in resolving outstanding Aboriginal claims to land and other rights. Comprehensive land claims agreements, which are also called modern treaties, are government-to-government agreements generally entered into in circumstances where Aboriginal land and resource rights have not been addressed by previous treaties or any other

legal means. These treaties typically recognize and define the Aboriginal land and resource rights of the Aboriginal signatory, and are intended to meaningfully improve the social, cultural, political and economic wellbeing of the Aboriginal people concerned. While the signatories to these treaties are Aboriginal, federal and provincial or territorial governments and their terms are typically lengthy and complex, their goal of creating long-term relationships built on, among other things, mutual respect, the recognition of Aboriginal rights and the facilitation of partnership is one to which business and Aboriginal peoples should aspire.

110. Modern treaties address a range of issues, including ownership, use and management of lands, waters and natural resources, harvesting of fish and wildlife, environmental protection and assessment, economic development, employment, government contracting, capital transfers, royalties from resource development, impact benefit agreements, parks and conservation areas, social and cultural enhancement, and self-government and public procurement arrangements. The treaties, once ratified, become constitutionally recognized and protected, and their provisions are intended to provide a mutual foundation for the beneficial and sustainable development and use of Indigenous peoples' traditional lands and resources.

111. Although businesses are not signatories to these agreements, provisions in these agreements have provided an effective foundation to support relationships between businesses and Indigenous communities, which have, in a number of cases, generated substantial economic benefits for all parties. Examples of modern treaties include the James Bay and Northern Quebec Agreement, the Nisga'a Final Agreement, the Inuvialuit Final Agreement, the Gwich'in Comprehensive Land Claim Agreement, the Nunavut Land Claims Agreement, and the Yukon First Nations Final Agreements.

PART V

# CONCLUSION

112. The basic challenge of Indigenous consultation and accommodation arises because Canada's conduct and treatment of Indigenous peoples has caused immeasurable harm. As a result, Canada's relationship with Indigenous peoples suffers from a lack of respect and trust. The need for reconciliation emanates from the need to establish respectful relationships. Reconciliation must therefore form the core of any consultation and accommodation process.

113. Canada is still beginning its reconciliation with Indigenous peoples. While it is important to acknowledge that progress has been made, we cannot lose sight of the long road ahead. Similarly, the principles of free, prior and informed consent are still relatively novel, and have not been subject to substantial interpretation. While future legislation, government policy, and judicial interpretation will determine whether the duty to consult and, if appropriate, accommodate under Canadian law, and the international principles of free, prior and informed consent differ in certain ways, it is clear that both share the same goal: to protect Aboriginal peoples' rights, remedy historical disadvantage, and provide the foundation for a more dignified and respectful relationship between Indigenous peoples and Canada. Both regimes aim to foster reconciliation.

114. To build the necessary respect and trust that underlies reconciliation, we cannot simply proclaim it. We need to earn that respect and trust through conduct and action. One way in which reconciliation can be fostered is by approaching Indigenous consultation and accommodation processes through the lens of building long-term relationships, aimed at satisfying all parties' interests. It is useful to think

of these relationships through the mindset of partnership. A partnership model is the antithesis of unilateralism, exploitation and neglect.

115. Flowing from the model of partnership, Indigenous peoples should be provided with the opportunity to participate in all aspects—procedural and substantive—of a project or activity that may affect their rights. In the context of this approach, government should play a useful role in determining the appropriate form of consultation in the context and helping parties align their incentives so that all significant interests can be met.

116. It is undeniable that the imperative of reconciliation falls first on the shoulders of the Crown. However, in practice, when Indigenous consultations are required in connection to a project or activity led by the private sector, the consultation process is in whole or in part delegated to the proponent. Various corporate codes of conduct have incorporated the principles of free, prior and informed consent. The Truth and Reconciliation Commission called on the private sector in Canada, as well as Canadian governments, to implement the Declaration. It is therefore important for the private sector in Canada to consider how its actions may facilitate reconciliation as well. By approaching Indigenous peoples as partners, Canadian companies take an important step.

117. The review reflected in this paper reveals many challenges on the path towards reconciliation, but by the same token, those challenges present unique opportunities for Canada and Indigenous peoples to build a relationship that endures and is worthy of celebration by everyone.

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s.23

**TITRE/TITLE: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples**

[redacted]

Soumis par (secteur)/Submitted by (Sector): Aboriginal Affairs Portfolio

Responsable dans l'équipe du SM/Lead in the DM Team: Alexia Taschereau

Revue dans l'ULM par/Edited in the MLU by: Matt Ignatowicz

Soumis au CM/Submitted to MO:

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**Liliana Cerretti - FW:** [redacted]

**From:** "Boudreau, Josee" <Josee.Boudreau@justice.gc.ca>
**To:** "Leduc, Sandra" <Sandra.Leduc@justice.gc.ca>, "Cerretti, Liliana(AADNC-A...
**Date:** 12/7/2015 11:50 AM
**Subject:** [redacted]
**Attachments:** [redacted]

Bonjour,

[redacted]

Josée

**From:** Boudreau, Josee
**Sent:** Monday, December 07, 2015 11:08 AM
**To:** Clark, Caroline; McGrath, Carla
**Cc:** Arthurs, Cynthia; Hickey, Wendy
**Subject:** [redacted]

Caroline and Carla,

[redacted]

Josée

**From:** Clark, Caroline
**Sent:** Monday, December 07, 2015 9:00 AM
**To:** McGrath, Carla
**Cc:** Boudreau, Josee; Arthurs, Cynthia; Hickey, Wendy
**Subject:** [redacted]

Thanks very much.

Sent from my BlackBerry 10 smartphone on the Rogers network. s.23

**From:** McGrath, Carla
**Sent:** Monday, December 7, 2015 8:42 AM
**To:** Clark, Caroline
**Cc:** Boudreau, Josee; Arthurs, Cynthia; Hickey, Wendy
**Subject:** [redacted]

Caroline,

[redacted]

Carla

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| Security classification -- Côte de sécurité |
| --- |
| Solicitor-Client Privilege |
| File number -- Numéro de dossier |
| |
| Date |
| December 11, 2015 |
| Telephone / FAX -- Téléphone / Télécopieur |
| (613) 907-3630 |

MEMORANDUM / NOTE DE SERVICE

TO / DEST: Pam McCurry
Assistant Deputy Attorney General

s.23

FROM / ORIG: Caroline Clark,
A/Director General and Senior General Counsel

SUBJECT / OBJET:

Comments/Remarques

[redacted]

JUS 107A (91/10) 7530-21-036-5336

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Department of Justice Canada | Ministère de la Justice Canada

| Security classification -- Côte de sécurité |
| --- |
| Secret professionnel de l'avocat |
| File number -- Numéro de dossier |
| |
| Date |
| Le 11 décembre 2015 |
| Telephone / FAX -- Téléphone / Télécopieur |
| (613) 907-3630 |

MEMORANDUM / NOTE DE SERVICE

TO / DEST: Pam McCurry
Sous-procureure générale adjointe s.23

FROM / ORIG: Caroline Clark,
Directrice générale et avocate générale principle par intérim

SUBJECT / OBJET: [redacted]

Comments/Remarques [redacted]

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**Liliana Cerretti -** [redacted]

**From:** Liliana Cerretti
**To:** McGrath, Carla
**Date:** 12/11/2015 1:03 PM
**Subject:** [redacted]
**CC:** Stuhec, Ana
**Attachments:** [redacted]

[redacted]

Thank you

LIliana

>>> "Leduc, Sandra" <Sandra.Leduc@justice.gc.ca> 12/11/2015 12:59 pm >>>
Hi Carla,

[redacted]

Sandra

s.23

**From:** McGrath, Carla
**Sent:** December-11-15 12:18 PM
**To:** Cerretti, Liliana (AADNC-AANDC); Kontos, Alexis; Boudreau, Josee; Leduc, Sandra; McGunigal, Sharon; Skogan, Stephanie J.
**Subject:** [redacted]

[redacted]

Thanks,

C

**From:** Liliana Cerretti [mailto:Liliana.Cerretti@aadnc-aandc.gc.ca]
**Sent:** 2015-Dec-11 12:09 PM
**To:** Kontos, Alexis; McGrath, Carla; Boudreau, Josee; Leduc, Sandra; McGunigal, Sharon; Skogan, Stephanie J.
**Subject:** Rép. : [redacted]

[redacted]

Thank you

Liliana

>>> "McGrath, Carla" <Carla.McGrath@justice.gc.ca> 12/11/2015 12:06 pm >>>
Hi all,

FYI

Carla

**From:** Clark, Caroline
**Sent:** 2015-Dec-11 11:55 AM
**To:** McGrath, Carla
**Cc:** Hickey, Wendy; Arthurs, Cynthia; Franey, Mary
**Subject:** [redacted] s.23

For your records.

Caroline Clark
613-907-3630

**From:** Kwan, Diana
**Sent:** Friday, December 11, 2015 10:58 AM
**To:** Beaton, Heather
**Cc:** Clark, Caroline; Facette, Pierrette
**Subject:** [redacted]

Hi Heather – [redacted]

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**Liliana Cerretti -** [redacted]

**From:** Liliana Cerretti
**To:** Lacourcière, Michel; Lafontaine, Alain; Weldon, Francois
**Date:** 12/11/2015 8:29 AM
**Subject:** [redacted]
**CC:** Caroline Clark; Kwan, Diana; McGrath, Carla; Stuhec, Ana
**Attachments:** [redacted]

[redacted]

THank you

Liliana
>>> Liliana Cerretti 12/10/2015 7:54 pm >>>

[redacted]

Sorry for the delay

Liliana

>>> Liliana Cerretti 12/10/2015 7:51:17 PM >>>

[redacted]

Thank you

s.23

Liliana

>>> "McGrath, Carla" <Carla.McGrath@justice.gc.ca> 12/10/2015 4:09:36 PM >>>

Caroline,

[redacted]

Thanks,

Carla

**From:** McGrath, Carla
**Sent:** 2015-Dec-10 2:53 PM
**To:** Cerretti, Liliana (AADNC-AANDC)
**Cc:** Stuhec, Ana (AADNC-AANDC); Clark, Caroline
**Subject:** RE: NCR-#8258301-v1-UNDRIP-SPC-17_Dec_2015_3_3_1.ppt

Hi all,

[redacted]

Thanks,

Carla

s.23

**From:** Liliana Cerretti [mailto:Liliana.Cerretti@aadnc-aandc.gc.ca]
**Sent:** 2015-Dec-10 12:56 PM
**To:** McGrath, Carla
**Cc:** Stuhec, Ana (AADNC-AANDC); Clark, Caroline
**Subject:** [redacted]

[redacted]

**Pages 91 to / à 93**

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**de la Loi sur l'accès à l'information**

8390-16



**Liliana Cerretti** [redacted]

**From:** Liliana Cerretti
**To:** Lafontaine, Alain
**Date:** 12/16/2015 4:27 PM
**Subject:** [redacted] s.23
**CC:** Stuhec, Ana
**Attachments:** [redacted]

[redacted]

merci

Liliana

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**21(1)(a), 23**

**of the Access to Information Act**

**de la Loi sur l'accès à l'information**

## Bonenfant, Sophie

**From:** Ignatowicz, Matthew Mark
**Sent:** December-29-15 12:30 PM
**To:** Boudreau, Josee
**Cc:** Poliquin, Stéphanie; Legault, Yanike; Ministerial Liaison Unit; Lafleur, Eric; * MLU Group; Garskey, Adam; Rousselle, Sonia; Diotte, Michelle; Kwan, Diana; Facette, Pierrette
**Subject:** SUBMITTED: 2015-012894 United Nations Declaration on the Rights of Indigenous Peoples

Bonjour,

Please be advised that the above-referenced briefing note was approved by the Associate Deputy Minister's office and submitted to the Minister's office today, December 29, **for information.**

Attached for your reference and file is the final e-version.

Please do not hesitate to contact me should you have any questions or concerns.

Merci,

Matt Ignatowicz
Briefings Officer | Agent de breffage
Ministerial Liaison Unit | Unité de la liaison ministérielle
Department of Justice Canada | Ministère de la Justice Canada
BB: (613) 716-5133
mmignato@justice.gc.ca

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Department of Justice Canada | Ministère de la Justice Canada

NUMERO DU DOSSIER/FILE #: 2015-012894
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Solicitor-Client Privilege

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TITRE/TITLE: **United Nations Declaration on the Rights of Indigenous Peoples**

[redacted]

Soumis par (secteur)/Submitted by (Sector): Aboriginal Affairs Portfolio

Responsable dans l'équipe du SM/Lead in the DM Team: Adam Garskey

Revue dans l'ULM par/Edited in the MLU by: Matt Ignatowicz

Soumis au CM/Submitted to MO: December 29, 2015

Department of Justice Canada | Ministère de la Justice Canada

Solicitor-Client Privilege
FOR INFORMATION

2015-012894

# MEMORANDUM FOR THE MINISTER

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## United Nations Declaration on the Rights of Indigenous Peoples

[redacted]

**Page 105**

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**PREPARED BY**
Josée Boudreau
Legal Counsel
Aboriginal Law Centre
613-907-3670

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# Question Period Note

## TRUTH AND RECONCILIATION COMMISSION

**ISSUE:**

On December 15, 2015, the Government of Canada received the final report of the Truth and Reconciliation Commission which contains 94 Calls to Action. How and when will the Government respond to the Calls to Action?

**PROPOSED RESPONSE:**

- **The Government of Canada remains committed to renewing the relationship between Canada and Indigenous peoples. This relationship will be based on respect, cooperation, and partnership.**

- **The Prime Minister has indicated that no relationship is more important than the one with Indigenous people.**

- **The Government is carefully reviewing the final report of the Truth and Reconciliation Commission, including the 94 Calls to Action, to elaborate a national reconciliation framework.**

- **The Government of Canada is committed to working with Indigenous peoples and key partners, including provinces and territories, to design a national engagement strategy for developing and implementing a national reconciliation framework, informed by the Truth and Reconciliation Commission's Calls to Action.**

- **The Government has already taken concrete measures regarding the implementation of the Calls to Action by launching a national "pre-inquiry" into missing and murdered Indigenous women and girls.**

- **The Government has also already joined other countries in supporting the United Nations Declaration on the Rights of Indigenous Peoples.**

**BACKGROUND:**

The Truth and Reconciliation Commission (TRC) was created on September 19, 2007, under the Indian Residential Schools Settlement Agreement (IRSSA) with a mandate to produce and submit a public report to the Government of Canada regarding the ongoing legacy of Indian Residential Schools (IRS).

On December 15, 2015, the TRC released its final report, titled *Honouring the Truth, Reconciling for the Future*, along with 94 Calls to Action.

[redacted]

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| **CONTACTS:** | | | |
|---|---|---|---|
| Prepared by: | Tel. N°.: | Approved by: | Tel. N°.: |
| Charles J. Bélanger, Counsel, Aboriginal Affairs and Northern Development Canada, Legal Services Unit | 819-953-2288 | Pamela McCurry, Assistant Deputy Attorney General, Aboriginal Affairs Portfolio | 613-907-3648 |

## Pentney, William

**From:** Hudson, Michael
**Sent:** January-26-16 12:45 PM
**To:** Pentney, William
**Subject:** s.19(1) s.23
**Attachments:**

Bill,

Michael Hudson Associate Assistant Deputy Attorney General /
Sous-procureur général adjoint délégué Aboriginal Affairs Portfolio / Portefeuille des Affaires autochtones
1138 rue Melville Street, Suite 900 Vancouver, BC
T: 604-775-5173 F: 604-775-5152 mhudson@justice.gc.ca

You can communicate with me in the the official language of your choice. / Vous pouvez communiquer avec moi dans la langue officielle de votre choix

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# Twenty-first and Twenty-Second Reports of Canada on the ICERD

**March 2016**

## I. INTRODUCTION

1. The present report outlines key measures adopted in Canada to enhance the implementation of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) since its appearance before the United Nations (UN) Committee on the Elimination of Racial Discrimination in February 2012. The report was prepared collaboratively by federal, provincial and territorial (F-P/T) governments.

2. In general, information that can be found in other reports submitted by Canada is not repeated in this report; references are added as appropriate. This includes Canada's Common Core Document and the Interim Report submitted in 2014 at the request of the Committee on Concluding Observations 16, 17, 19 and 21.

3. Any reference to "the Government of Canada" in this report is a reference to the Canadian federal government, while a reference to "Canada" is generally a reference to the federal, provincial and territorial governments combined. Furthermore, any reference to the provinces or territories, for example, Quebec, Manitoba or the Yukon, is generally a reference to their government.

## II. OVERARCHING IMPLEMENTATION CONSIDERATIONS

4. This section of the report focuses on Concluding Observations 7, 9, 13, 22, 26 and 27, and contains information related to the Canada's demographic context and its overarching approach to combating racial discrimination and to promoting equality for Canadians of all races and ethnicities.

### Demographic context

5. According to the 2006 Census, Indigenous people accounted for 3.8% of the total Canadian population. In the 2011 National Household Survey (NHS), 1,400,685 people reported an Indigenous identity representing 4.3% of the total Canadian population. Of these, 851,560, or 60.8%, identified as First Nations (North American Indian) only. Another 451,795, or 32.3%, identified as Métis only; and 59,445, or 4.2%, identified as Inuit only.

6. In 2011, Canada had a foreign-born population of about 6,775,800 people, representing 20.6% of the total population. Between 2006 and 2011, around 1,162,900 foreign-born people immigrated to Canada. These recent immigrants made up 17.2% of the foreign-born population and 3.5% of the total population in Canada.

7. More than 200 ethnic origins were reported by respondents to the NHS. In 2011, 57.9% of the population reported one ethnic origin and the rest, 42.1%, reported more than one origin. Nearly 6,264,800 people identified themselves as a member of a visible minority group. They represented about 1 out of every 5 people (19.1%) in Canada's total population. The data showed that visible minorities accounted for 78.0% of the immigrants who arrived between 2006 and 2011, 76.7% of those who arrived in the previous five-year period and 74.8% of immigrants who arrived in the 1990s.

8. Combined, the three largest visible minority groups—South Asians, Chinese and Blacks—accounted for 61.3% of the visible minority population in 2011. They were followed by Filipinos, Latin Americans, Arabs, Southeast Asians, West Asians, Koreans and Japanese.

9. Just under 945,700 individuals identified themselves as Blacks. They made up 15.1% of the visible minority population and 2.9% of the total population. In 2011, 29.8% of individuals identifying themselves as Blacks reported multiple ethnic origins. The top ancestral origins were Caribbean and African such as Jamaican (22.8%), Haitian (13.9%) and Somali (4.4%). These origins were reported either alone or with other origins. There were also individuals who reported British Isles (10.9%), Canadian (10.8%) and French (4.3%) origins.

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## Federal, provincial and territorial mechanisms to combat racial discrimination

10. Canada has a strong legal and policy framework to combat racial discrimination and to advance substantive equality. This framework includes prohibitions on discrimination and intolerance in the *Canadian Charter of Rights and Freedoms*, the *Criminal Code*, and F-P/T human rights statutes. In particular, the *Canadian Multiculturalism Act* recognizes diversity as a fundamental characteristic of Canadian society; encourages institutions to be respectful and inclusive of Canada's multicultural character; and makes a commitment to promote the full and equitable participation of individuals of all origins and to eliminate barriers to that participation.

11. Canada also has a wide range of measures to promote diversity and inclusion, such as: employment equity legislation, policies, programs and services at the F-P/T levels. At the same time, Canada takes special measures, where necessary, to advance substantive equality for certain groups, most notably for Indigenous peoples who have suffered particular disadvantage.

12. For more information on F-P/T measures, see paragraphs 164-168 and 170 of Canada's Common Core Document. More examples are provided throughout this report.

## Combatting racist violence

13. In 2013, there were 585 incidents of police-reported hated crimes motivated by race or ethnicity, which represents a 17% decline in such incidents from the previous year. The black population is the most highly targeted group among these incidents, amounting to 44% of racial hate crimes. Hate crimes targeting East and Southeast Asian populations comprised 10% of racial hate crimes, followed by those targeting South Asian (9%), Arab and West Asian (8%) and Indigenous (5%) populations.

14. Acts of violence, by individuals acting alone or as members of a group, are prohibited by a number of criminal offences, while the motivation behind a crime can be taken into account during sentencing. The *Criminal Code* requires judges to consider, as an aggravating circumstance in sentencing, any evidence that a crime was motivated by bias, prejudice or hate based on grounds including race, colour, religion, and national or ethnic origin. It is also a specific crime to vandalize or damage property primarily used for religious worship, if the action is motivated by bias, prejudice or hate based on religion, race, colour or national or ethnic origin.

15. As explained in detail in Canada's 19th and 20th Reports on ICERD, the *Criminal Code* has three hate propaganda offences: advocating or promoting genocide against an identifiable group, inciting hatred against an identifiable group in a public place likely to lead to a breach of the peace, and willfully promoting hatred against an identifiable group. The Code defines an identifiable group as "any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability."

16. In 2015, the Government of Quebec tabled the Bill to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals. The Bill provides for the prohibition of hate speech and speech inciting violence that are engaged in or disseminated publicly and that target a group of people sharing a common characteristic identified as prohibited grounds for discrimination under the *Québec Charter of Human Rights and Freedoms*. The Bill is still under review.

## Commemoration activities

17. Over the past number of years and moving forward, Canada has made concerted efforts to recognize the contributions of African Canadians, other ethnocultural communities as well as Indigenous peoples to Canadian society.

**The War of 1812 and World Wars**

18. To commemorate the role of Indigenous peoples and ethnocultural communities, including African Canadians, during the War of 1812 and the World Wars, the Government of Canada has:

- Launched the World War Commemorations Community Fund in 2015, with preference accorded to funding proposals that highlighted the contributions of Indigenous peoples and ethnocultural communities and/or involved Indigenous and ethnocultural communities in their delivery.

- Developed two website portals that provide Canadians with information regarding the historical contributions of Indigenous peoples and ethnocultural communities, including African Canadians, during the War of 1812 and the World Wars respectively, with pages that include archival data, images and related links.

- Involved the participation of Indigenous Veterans organizations in all its events related to the World Wars.

- Created a dedicated on-line Exhibit: *Indigenous Contributions to the War of 1812* and produced postcards on some of the key Indigenous figures of the war.

- Highlighted the role of African Canadians in the War of 1812 during activities to celebrate Black History Month in February 2012.

- Presented medals to 48 First Nation and Métis communities whose ancestors played a role in the War of 1812 at a National Recognition Ceremony that took place in October 2012, at the Governor General's residence. These medals were based on the original medal design from military banners and medals that had been

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presented at the end of the War to Indigenous groups who had fought alongside British forces.

**Black Loyalists**

19. Between 1783 and 1785, more than 3000 Black persons came to settle in the provinces of Prince Edward Island, Nova Scotia and New Brunswick as a direct result of the American Revolution. To commemorate these Black Loyalists, in 2015, the Government of Nova Scotia opened a new provincial museum called the Black Loyalist Heritage Centre. In line with the *Renewed Cultural Policy for New Brunswick*, commemoration activities have also been taking place to mark the arrival and contribution of the Black Loyalists to the province.

### Consultations with civil society and Indigenous organizations

20. The views of more approximately 175 civil society and Indigenous Organizations were sought with respect to the issues to be covered in this report and four written submissions were received and carefully considered.

21. More information on consultation initiatives can be found throughout this report.

### Availability of reports and Concluding Observations

22. Canada's reports to UN human rights treaty bodies and the Concluding Observations issued to Canada are available to the public through the Government of Canada website. F-P/T governments also distribute these materials within their respective organizations.

## III. ETHNOCULTURAL GROUPS

23. This section contains information regarding the social, economic and cultural rights of ethnocultural groups, including African Canadians, and changes to Canada's asylum system. It focuses on Concluding Observations 16 and 15.

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### Ethnocultural groups, including African Canadians

24. Canada already provided substantial information in response to recommendation 16 in its 2014 Interim report (paragraphs 5-75). The following is meant to update and complement the information already provided.

**Education**

25. In addition to the implementation measures in its school integration and intercultural education policy that aim to support the success of immigrant students, the Government of Quebec has taken specific steps to encourage the success of African Canadian students, including:

    - the production of an educational publication that highlights the contribution of African Canadians to the history and development of Quebec society, which is offered to schools as supplementary learning material; and

- the organization of intercultural awareness activities in the schools by the Black History Month Round Table.

26. Quebec's measures have contributed to a noticeable improvement in the academic success of African-Canadian students. For example, 42.6% of young Quebec students from the Caribbean or Bermuda, who began high school in 1994-1995, earned a high school diploma seven years later. Nearly a decade later, 60.6% of students born in the Caribbean or Bermuda, who began high school in 2005-2006, earned their high school diploma or qualification seven years later.

27. The Government of Ontario's Equity and Inclusive Education Strategy aims to help the education community identify and remove discriminatory biases and systemic barriers in order to support student achievement and well-being. In support of the Strategy's implementation, Ontario has funded a diverse range of initiatives, such as the development of an Afrocentric resource to assist teachers to engage students and support student learning.

28. In 2015, Ontario invested $752,800, over three years, to help implement and evaluate a program designed to reduce the high school dropout rate of Somali youth in Toronto. The program will provide youth with mentors, who will support students with individualized learning plans, monitor academic performance and classroom attendance, and work with teachers to support student success. A Somali-speaking project coordinator will also work with parents to reinforce classroom learning.

29. Nova Scotia has a dedicated African Canadian Services Division within its education ministry that develops, promotes and delivers programs, resources and services for African Nova Scotian students. It advises and guides the provincial government regarding African Canadian Education, promotes understanding of African Canadians and their history, heritage, culture, traditions and contributions to society, ensures African Canadian students have greater access to post-secondary institutions, and works with staff to address systemic racism and discrimination by facilitating implementation of Nova Scotia's Racial Equity Policy.

**Integration**

30. F-P/T governments have a variety of settlement and integration initiatives in place to support immigrants to Canada. These efforts are designed to mitigate the difficulties encountered by immigrants (e.g. foreign credential recognition, language barriers, etc.) and help them fully engage in all aspects of Canadian life, and to maximize the benefits of their participation and contribution to Canadian society.

31. [redacted] s.21(1)(a)

32. Quebec's Support for the integration of cultural communities and intercultural education at the CEGEP level program supports college teaching establishments that organize socio-pedagogical or socio-cultural activities that target one of the following three objectives:

- supporting the arrival and integration of Quebec students from ethnic communities; raising the awareness of all CEGEP students of the issues concerning rights education and intercultural education;

- encouraging learning about other cultures; and

- developing attitudes of openness and mutual respect among students and staff.

33. In 2014-2015, 82,642 immigrants in Quebec accessed a variety of public employment services to help them integrate in the workforce:

    - The Québec Pluriel mentoring program, designed to support the professional integration of young members of cultural communities and visible minority groups. In 2014-2015, the program supported 156 mentoring pairs.

    - The Employment Integration Program for Immigrants and Visible Minorities helps immigrants and visible minorities during their first work experience in their trade or occupation. In 2014-2015, the program supported 876 participants.

    - The French framework program for adult immigrants in Quebec, seeking to improve the French language competency of participants.

    - The recognition of acquired competencies, helping individuals obtain official recognition of the competencies associated with a program of study or with certain of its components through certification by the Quebec department of education and advanced learning or by other educational establishments.

34. Ontario funds over 90 community-based not-for-profit organizations through the Newcomer Settlement Program (NSP). Annually, approximately 80,000 newcomers receive services funded under the NSP. Settlement services are provided in over 90 languages to newcomers from about 100 countries in more than 30 communities across the province. The NSP also allows for initiatives such as enhancing services for vulnerable populations and under-served communities (e.g., programming for Somali and Roma youth and skill development programming for low skilled and isolated immigrant women).

35. Ontario also offers Adult non-credit English and French as a second language training program to about 70,000 adult immigrants each year, whose first language is not English or French.

36. In 2015, the Government of Yukon hosted a public summit on foreign qualification recognition to generate action items and new ideas on the integration of foreign-trained workers in the north. The summit was a continuation of the work of the Department of Education, which assists immigrants and supports employers with tools and resources to help them hire and retain foreign-trained workers.

37. In 2015-2016, Yukon is investing $2.7 million over five years to support English language learners in public schools. Seven full-time teachers and paraprofessionals will be hired to help students improve their English language skills, helping increase their chances of academic success and helping them integrate into the community.

38. The Government of Newfoundland and Labrador funds community-based organizations to deliver labour market integration services and English as a Second Language (ESL) services. These include: 12-week paid internships; workforce connections and language programs providing tools and information to entry-level job-seekers; employment and career counselling services; business development supports for entrepreneurs; evening language and pronunciation classes; and an outreach-tutor program for ESL in rural communities.

39. The Government of British Columbia has a WelcomeBC website that provides online resources and information on programs and services available to newcomers to assist them in getting settled, finding work and contributing to the province's growing economy.

**Multiculturalism**

40. In 2015, the Government of Canada's Multiculturalism Program project funding will focus on the civic engagement of all Canadian youth aged 15 to 24, including African Canadians and other ethno cultural and racial groups.

41. In 2015-2016, British Columbia's Ministry of International Trade and Responsible for Asia Pacific Strategy and Multiculturalism, whose mandate is to promote and support multiculturalism and connect communities with services to eliminate racism, is providing $300,000 through the Multiculturalism Grant program for projects or events supporting cultural expression, or activities that challenge racism and hate or promote diversity in the workplace. British Columbia also invested $500,000 in 2015-2016 for anti-racism contracts to help build capacity in communities to address racism locally. This funding also strengthens the current 28 communities involved in the Organizing against racism and Hate Network.

42. Under the Government of New Brunswick's Population Growth Strategy 2014-2017, the province has been funding organizations to deliver public education programs to employers, schools and the general community, to promote diversity and multiculturalism. A similar program is being developed for delivery within government.

43. Newfoundland and Labrador's Policy on Multiculturalism aims to foster cross-cultural collaboration while working to build a vibrant and dynamic province. The policy provides a framework for promoting respect, equality, collaboration, and inclusive citizenship for all people living in the province.

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**Employment Equity**

44. Since 2014, the Government of Canada, through its Workplace Opportunities: Removing Barriers to Equity program, is investing $500,000 per year to help improve areas experiencing low representation for members of four designated groups, including visible minorities and Indigenous peoples, in federally regulated organizations.

45. According to the 2014 Employment Equity Act Annual Report, the overall representation of members of visible minorities in the federally regulated private sector increased from 18.6% in 2012 to 19.6% in 2013.

*Public Service*

46. According to the 2013-2014 Annual Report on Employment Equity in the Public Service of Canada, the overall representation of members of a visible minority group increased from 12.6% to 13.2% (the highest percentage increase among the four designated groups), exceeding their workforce availability by a 0.8 percentage point. In the executive cadre, members of a visible minority group represented 8.5% of executives, exceeding their workforce availability by 1.2 percentage points.

47. Members of visible minorities are being appointed to the federal public service at a rate that exceeds their workforce availability of 12.4% based on the 2006 Census: in 2011-2012, 22.3%; in 2012-2013 14.7%; and in 2013-2014, 16%.[1]

48. In 2014, Manitoba launched a new Diversity and Inclusion Strategy that includes increased employment equity representation benchmarks in the public service. Since the last reporting period, government representation of visible minority employees increased from 9% to 10.3%.

**Housing**

49. [redacted]

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50. In 2011, visible minority households in Canada (households with primary maintainers who self-identify as visible minorities) made up 14.1% of Canadian households, up from 11.9% in 2006. Nearly all of them lived in the country's largest cities. Certain visible minority households are more prevalent than others, for example: Chinese (22.3% of visible minority households); South Asian (22.8%); and Black (16.9%). These three groups together accounted for almost two-thirds (62.1%) of visible minority households.

51. The incidence of core housing need for visible minority households generally improved between 2006 and 2011, with the incidence of housing need decreasing from 23.1% to 20.2 %. The incidence of housing need decreased for nearly all visible minority groups, for example: West Asian (from 35.4% to 29.3%); Korean (from 34.5% to 29.1%); Arab (from 28.6% to 24.8%); Black (from 27% to 24.3%). It differed by less than a percentage point for Japanese (from 12.4% to 12.5%), the only group not showing a decrease.

[1] In 2012-2013, a common methodology was developed to ensure consistent reporting of employment equity data across the federal public service, which resulted in improved quality and completeness of information on designated groups, in addition to improving efficiencies by which departments and agencies will obtain and report on employment equity data. Due to the change in methodology, figures published in fiscal years prior to 2012-2013 are not comparable with figures published since 2012-2013.

52. Overall, visible minority households experienced crowding and affordability problems and were in core housing need nearly twice as often as non-visible minority households. This difference was only partially related to visible minority status; it also resulted, in part, from visible minority households more frequently being recent immigrants and from their geographic concentration in Canada's largest, most expensive cities.

[redacted]

### Changes to Canada's asylum system

53. Regarding Concluding Observation 15, under the *Balanced Refugee Reform Act*, the Government of Canada has the authority to identify designated countries of origin (DCO). The purpose of the DCO policy is to expedite processing of claims from countries that have been identified to respect human rights, offer state protection and that do not normally produce refugees.

[redacted]

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54. Making an asylum claim in Canada is not a ground for detention. A person may be detained where there is a danger to the public, if it is required for an examination to be completed, or where identity has not been established. Canada is committed to carrying out detention in accordance with fundamental procedural safeguards, and detainee rights as guaranteed by the *Canadian Charter of Rights and Freedoms*. Individuals who are detained for immigration purposes are protected from arbitrary detention, and have access to effective remedies. Canada's immigration laws permit the Canada Border Services Agency (CBSA) to detain individuals in certain circumstances.

55. With respect to children, the principle of the best interests of the child is applied in efforts to assist children of refugees and immigrants throughout the immigration continuum, including at the time of detention.

56. Children are detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child. This is a statutory requirement contained in the *Immigration and Refugee Protection Act*. CBSA officers carefully consider what is in a child's best interest. Some of the factors that officers consider in this context include the availability of alternative childcare arrangements; the anticipated length of detention; the risk of continued control by human smugglers or traffickers; the availability of separate living areas for children and their parents or guardians; and access to counselling, education and recreation services. The requirement to consider these factors is set out in the Immigration and Refugee Protection Regulations.

57. Accompanied minors may be permitted to remain with their detained parents in an immigration holding centre if a CBSA officer considers it to be in their best interest and appropriate facilities are available. With regard to unaccompanied minors, these individuals are generally released into the care of provincial child protection services or family members. CBSA immigration holding centres in Quebec and Ontario have

separate living areas for families and, if they are held more than seven days, children have access to a teacher.

58. The CBSA seeks to continuously improve its detention program and facilities to ensure they meet the highest detention standards and international protocols.

## IV. INDIGENOUS PEOPLES

59. This section focuses on Concluding Observations 10, 17, 18, 19 and 20 regarding Indigenous peoples. It includes information on initiatives undertaken to improve their socio-economic conditions, initiatives addressing violence against Indigenous women and girls and consultations with Indigenous peoples with respect to Indigenous and treaty rights.

### Federal strategies

60. Regarding Concluding observation 10, the Government of Canada's overarching strategy is to renew the relationship between Canada and Indigenous Peoples on a nation-to-nation basis (based on recognition, rights, respect, co-operation, and partnership), and to make real progress on issues like housing, employment, health, community safety, policing, child welfare, and education.

#### Canada-First Nations Joint Action Plan

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61. In June of 2011, the Government of Canada and the Assembly of First Nations jointly announced a Canada-First Nations Joint Action Plan that expresses a commitment to work together to improve the long-term prosperity of First Nation people and all Canadians.

62. Based on common goals and shared principles, the Joint Action Plan is intended to strengthen the Canada-First Nation relationship at the national level. Together, the Government of Canada and First Nations have embarked on a new phase in their relationship as a means of demonstrating concrete action in the priority areas of education; accountability, transparency, capacity and good governance; economic development; and negotiation and implementation.

63. Following upon the Joint Action Plan, a Crown-First Nations Gathering was held in 2012 and brought together First Nations Chiefs, the National Chief of the Assembly of First Nations, the then Prime Minister and other government representatives to discuss priority issues for First Nations communities. A joint Outcome Statement was issued committing to fundamental change and identifying five major steps: renewed relationship; removing barriers to First Nations governance; advancing claims resolution and treaty implementation; education reform; and capitalizing on economic development.

### Violence against Indigenous women

64. Governments in Canada are deeply concerned about violence against Indigenous women and the high number of missing and murdered Indigenous women and girls and continue to undertake initiatives and measures to address these issues. Substantial information on Canada's activities can be found in the 2014 Interim report in response

to Concluding Observation 17, in the Government of Canada's Observations to the Report of the Committee on the Elimination of Discrimination against Women on the Inquiry Concerning Canada, more particularly in Annex 1A, and in Canada's Eight and Ninth Reports on the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

**National database on murdered and missing Indigenous women**

65. The Royal Canadian Mounted Police (RCMP) has produced the most comprehensive account of missing and murdered Indigenous women in Canada to date in its National Operational Overview. The Overview reveals that missing and murdered Indigenous women are over-represented vis-à-vis their proportion of the Canadian population. Indigenous women accounted for 16% of female homicides and 11.3% of missing women, three to four times higher than the representation of Indigenous women in the Canadian population.

66. The research identified 1,181 missing and murdered Indigenous women in Canadian police databases: 164 missing (dating back to 1952) and 1,017 murdered (between 1980 and 2012). It further clarifies that almost 9 out of 10 murders of Indigenous women are resolved across Canadian law enforcement jurisdictions (897 out of 1,017). That leaves 120 homicide cases and 105 missing cases. The overview reveals a virtually identical homicide solving rate for Indigenous women (88%) and non-Indigenous women (89%). The study reveals that the rate of stranger perpetrated homicide against Indigenous women is 8%, virtually the same as for non-Indigenous women (7%).

67. The RCMP has changed its policy and reporting practices to collect and report on victim and offender Indigenous origin to the Canadian Centre for Justice Statistics Homicide Survey. The Canadian Police Information Centre (CPIC) has also made a number of changes to the Missing Persons and unidentified remains (Body) categories in the CPIC system over the past several years. CPIC is an integrated, automated system and is the only national information-sharing system linking police agencies across Canada and internationally. In 2010, 2011 and 2013, Biological Affinity and Cultural Affinity fields were added to CPIC, allowing the investigator to specify a missing person's Indigenous origin, including as First Nation, Inuit or Metis.

68. The RCMP remains committed to resolving the outstanding cases, and seeking closure and justice for families and friends of all Indigenous women who have gone missing or have been murdered in Canada.

**Investigations**

69. The National Centre for Missing Persons and Unidentified Remains (NCMPUR) is Canada's national centre that provides law enforcement, medical examiners and chief coroners with specialized investigative services in support of missing persons and unidentified remains investigations.

70. As part of its operations, the NCMPUR manages:

- The development and implementation of the national Missing Children/Persons and Unidentified Remains Database, which includes data on missing persons and unidentified remains investigations from across the country.
- The provision of investigational advice and case analysis to law enforcement partners.
- The national public website to provide information on selected cases to the public for the purposes of seeking tips on investigations.
- The provision of enhanced specialized services to investigators of primary jurisdiction such as Computer Age Progression, Amber Alert, the Travel Reunification Program, and Facial Approximation.

71. The NCMPUR also:

- Coordinates the National Amber Alert working group for Canadian police agencies.
- Researches and compiles investigative best practices.
- Develops training for police officers.
- Coordinates a multi-discipline multi-agency missing person investigation initiative.

s.21(1)(a)

[redacted]

**Federal, provincial and territorial collaboration**

72. F-P/T governments are collaborating to develop coordinated responses to address violence against Indigenous women and girls and have held high level government meetings for that purpose.

*Draft federal, provincial and territorial Justice Framework to Address Violence Against Aboriginal Women and Girls*

73. In 2013, F-P/T Ministers responsible for justice and public safety approved the Draft Justice Framework to Address Violence Against Aboriginal Women and Girls for public release. The draft Framework is intended to help F-P/T justice officials, Indigenous organizations, and other partners work together across the country, as well as within their respective jurisdictions, to find local solutions to address the serious issue of violence against Indigenous women and girls. F-P/T governments consulted with Indigenous groups and other stakeholders on the draft Framework. For example:

- The Government of Saskatchewan completed 22 dialogues where 700 people attended. Seven of the dialogues were organized by an Indigenous women's organization.
- The Government of Alberta met with First Nations and Métis Women's Economic Security Councils.

- British Columbia invited the Minister's Advisory Council on Aboriginal Women (comprised of Indigenous women), Indigenous organizations, victim service providers, justice professionals and other groups that provide services to Indigenous women and girls to provide their feedback.

74. Recognizing the need for further targeted action to address violence while discussions about the Draft Justice Framework continue, Justice and Public Safety Ministers have agreed to:.

- take action to change attitudes that lead to violence against women, including Indigenous women;
- monitor and support continuing police efforts to investigate the 225 unresolved cases of missing and murdered Indigenous women and girls;
- encourage and support community-led, culturally-responsive approaches to prevent and respond to violence, such as community safety planning;
- improve responses to violence, through greater integration and coordination of programs and services within government and in the community;
- pro-actively collaborate across multiple sectors to address causes of violence; and
- task justice officials with continuing to collaborate with each other and share information about promising practices to address violence against Indigenous women and girls.

75. The Draft Justice Framework was revised in January 21, 2016, taking into account the feedback received across Canada and it was adopted.

*National Roundtable on Missing and Murdered Indigenous Women*

76. In 2015, F-P/T governments, as well as representatives from five national Indigenous organizations, participated in a National Roundtable on Missing and Murdered Indigenous Women. All participants endorsed a Framework for Action to Prevent and Address Violence Against Indigenous Women and Girls, which identifies three key priority areas: prevention and awareness, community safety, and policing measures and justice responses. A commitment was also made to continue working together to prevent and end violence against Indigenous women and girls and to work directly with Indigenous communities and organizations to move forward on these priorities. Participants also decided to coordinate efforts toward tangible and immediate actions in each of the priority areas and implementation will vary based on relationships and priorities among Indigenous communities and organizations and F-P/T governments. The second Roundtable will take place in February 2016 and progress over the past year will be accessed.

s.21(1)(a)

77. The following are examples of other commitments undertaken by governments:

- The Government of Canada has invested in the National Association of Friendship Centre's Action for Women Mobile Platform, which will provide information to

Indigenous women and girls on how to protect themselves from violence and in the Native Women's Association of Canada's *Our Spirits are NOT for Sale: a Handbook for helping sexually exploited Indigenous women and girls.*

- Saskatchewan hosted a meeting of Indigenous, community, justice and government representatives in 2015 to begin developing a collaborative approach to address violence against Indigenous women and girls, including in families and communities.

- In 2015, Quebec Native Women organized a gathering of the loved ones of the missing and murdered Indigenous women with financial support from the governments of Quebec and Canada. Its goal was to bring together roughly 20 people and allow them, through the testimony of loved ones, to identify ways to help prevent and better intervene on this issue. With funding from the Government of Québec, the organization also published a report on Missing and murdered Indigenous women in Quebec, which identifies the risk factors and vulnerability associated with this trend and possible solutions.

- New Brunswick's Strategic Framework to End Violence Against Wabanaki Women provides the framework for the province's commitments at the National Roundtable and for continued engagement with Indigenous women and organizations to establish a coordinated, all-of-government approach that considers root causes of violence.

- Manitoba will host a forum bringing together specialized police officers, prosecutors and victim services workers who are assigned to respond to cases of murdered and missing Indigenous women to share promising practices and to reconsider systemic issues.

*Federal-Provincial-Territorial Ministers Responsible for the Status of Women*

78. In 2015, during the Annual Meeting of F-P/T Ministers Responsible for the Status of Women, Ministers addressed key priorities, including ending violence against women and girls, discussed the ongoing problem of sexual violence in Canada, and explored current prevention practices and comprehensive strategies to address the issue. Ministers examined the outcomes of the F-P/T Sexual Violence Knowledge Exchange held in 2015 and agreed to continue seeking opportunities to collaborate on preventing all violence against women.

**Prevention and protection measures**

*National inquiry into missing and murdered Indigenous women and girls*

79. In December 2015, the Government of Canada announced that it would launched a national ~~public~~ inquiry into missing and murdered Indigenous women and girls. The Government will first engage with survivors, family members and loved ones of victims, as well as National Indigenous, provincial, and territorial representatives to seek their views on the design and scope of the inquiry. It will then report back on what has been heard. ~~and t~~The views and ideas expressed by all participants will ~~allow~~ assist the Government to develop the framework of the inquiry, including its mandate, ~~its~~ and terms of reference. ~~i~~ [redacted] s.21(1)(a)

*F-P/T Initiatives*

80. The Government of Canada is currently implementing concrete actions to prevent violence, support Indigenous victims, and protect Indigenous women and girls from violence. For example:

s.21(1)(a)

- The Family Violence Prevention Program invests $31.74 million annually in an existing network of 41 shelters and numerous family violence prevention activities on and off reserve. From 2006 to 2014, the shelters provided a safe environment and services to over 27,514 women and over 24,290 children.
- The Aboriginal Community Safety Development Contribution Program supports Indigenous communities to develop individualized community safety plans responsive to local community safety needs.
- Justice Canada offers support for government and non-governmental organizations in the delivery of direct, culturally responsive victim services for Indigenous victims of gender-based violence and families of missing and murdered Indigenous women.

81. In 2015, Ontario supported the Chiefs of Ontario (COO) to convene a three-day gathering with 15 Ontario First Nation families of missing and murdered Indigenous women to identify barriers and challenges encountered after the death or disappearance of their loved ones. The families' input will help provide direction on the mandate and structure of an Ontario First Nation-led inquiry and the purpose and role of a national inquiry. An interim report on the feedback provided contains recommendations in the areas of healing and support services, leadership, police investigations and justice.

82. In 2015, British Columbia released the Vision for a Violence Free BC Strategy, which combines immediate actions with a long-term vision to end violence against women. To support priorities in this Strategy, the government provided $824,711 in grant funding to support community-led projects focused on addressing violence against Indigenous women and girls.

83. In 2015-2016, the Yukon provided $200,000 in funding to five culturally relevant initiatives designed and developed by and for Indigenous women as a key strategy in taking collective action on violence against Indigenous women.

84. Further, the government is providing funding to the Yukon Advisory Council on Women's Issues (YACWI) and the Liard Aboriginal Women Society to co-present the YACWI forum for women, themed Beyond Violence: Responding to interpersonal violence at work and in the home and community. The annual forum will offer opportunities for developing shared understanding and collective action to address violence in all its forms.

85. Manitoba's Family Violence Prevention Program plans and develops community programs to help stop family violence and supports special services for victims of family violence. For example, the Iskotew Aboriginal Women Healing Program is a three-year pilot project offering healing services specifically designed to assist Indigenous women who have experienced domestic violence. Using culturally

appropriate and community led approaches, the healing programs lead the way to decreasing the victimization of Indigenous women in the community.

**Awareness raising campaigns**

86. The Government of Canada is supporting Indigenous communities to raise awareness and create tools, activities and resources to build healthy relationships. For example, in 2014, it provided funding to: the Pauktuutit Inuit Women of Canada to develop and deliver a violence prevention and awareness campaign in 53 Inuit communities North of 60; the Native Women's Association of Canada to design and develop a community safety plan toolkit and to launch a national outreach campaign; the Assembly of First Nations for the creation of the video *Live A Life of Integrity*.

87. The federal government also developed awareness-raising materials for victims of family violence, including a set of materials aimed at Inuit victims of family-based violence. Similar materials for First Nations and Métis are currently under development.

88. Further, in 2014, it created a public service announcement, with singer Shania Twain, whose key message is that all types of abuse can happen in any family; that abuse should not be kept a secret and is never acceptable; and that silence needs to be broken by telling someone you trust and reporting it to police.

89. Since 2010, public awareness forums, providing information to the public on the issue of sexual exploitation of children, have continued annually in Manitoba. In 2015, the forum included a presentation on the issue of domestic trafficking of Indigenous girls in Canada.

s.21(1)(a)

90. Manitoba has also developed a four point plan to raise awareness and enhance co-ordination of sexual assault services and launched a sexual assault website in 2015. The website is aimed at increasing public awareness, enhancing knowledge on provincial resources, and providing information on interventional resources for victims of sexual assault.

91. Saskatchewan's Provincial Partnership Committee on Missing Persons hosted its third annual Missing Persons Week in May 2015, which focused on *A Community's Response to Missing Persons*.

92. In 2014, Alberta partnered with the Alberta Native Friendship Centres Association in launching the Moose Hide Campaign in the province where men and boys take a stand against violence towards women and girls and pledge to honour the women in their lives. The campaign, which was started by the British Columbia Association of Aboriginal Friendship Centres, is also active in British Columbia.

93. British Columbia's Office to Combat Trafficking in Persons raised awareness about the unique vulnerabilities of Indigenous girls and women to sexual exploitation and human trafficking in over 10 communities, including Indigenous communities.

94. In late 2014, the Government of the Northwest Territories launched a social marketing campaign, entitled *What will it take?*, aimed at changing attitudes and beliefs about family violence and geared towards people who witness family violence. It is designed

to give the public the confidence and skills they need to respond to situations of family violence.

**Consultations with Indigenous People**

95. In addition to the information provided in the 2014 Interim Report, more information on consultation initiatives can be found in paragraphs 35-53 of Annex A1 and in the 8th and 9th Reports on the CEDAW. Some new developments can be found below.

96. Ontario regularly meets and engages with the provincial Indigenous organizations that sit on the Joint Working Group on Violence Against Aboriginal Women, which is currently developing a long-term strategy to address violence against Indigenous women that will focus on system-wide changes to improve outcomes for Indigenous women in Ontario.

97. The government also ensured that Indigenous partners were represented as part of Ontario's delegation at the 2014 National Aboriginal Women's Summit and the 2015 National Roundtable on Missing and Murdered Indigenous Women and Girls.

98. In Quebec, close to 100 individuals provided their views on how to prevent and counter sexual assaults during a parliamentary commission in March 2015 and during one-day meetings held in Montréal, Rivière-du-Loup and Gatineau. The Committee on Citizen Relations' order of initiative to examine how the living conditions of Indigenous women relate to sexual assault and family violence will help complete the consultation process needed for the development of government measures related to sexual assault and exploitation.

s.21(1)(a)

99. In 2014, the RCMP KARE division met with the First Nations Council and discussed human trafficking of Indigenous women and girls.

100. In 2012, British Columbia consulted with members of the Indigenous community to develop its action plan to combat human trafficking. Indigenous communities vulnerable to sexual exploitation and human trafficking were identified as a key focus group for action in the plan.

**Family Homes on Reserves and Matrimonial Interests or Rights Act**

101. [redacted]

**On-and-off reserve socio-economic issues for Indigenous peoples**

102. Canada has provided detailed information in response to Concluding Observation 19 in the 2014 Interim report. The following is meant to update and complement the information already provided.

**Safe drinking water**

103. In place since 2003, one of the goals of Alberta's Water for Life Strategy is safe, secure drinking water for Albertans, including on-reserve. In 2014, the Water

Conservation Plan *Our Water, Our Future* was released and includes actions to develop options for First Nations, Metis Settlements, municipal, provincial and federal governments to collaboratively provide water and wastewater services to First Nations reserves and Métis Settlements.

**Education, training and employment**

104. Governments across Canada are investing in education, career counseling and jobs and skills training for Indigenous people, especially youth, to improve their access to education and to remove potential barriers to their employment.

*Education*

105. According to the 2011 National Household Survey, 69% of Indigenous people (18-24 years old) living off-reserve hold at least a high school diploma (62% in 2006) as compared to 38% of Indigenous people (18-24 years of age) living on-reserve (up from 35% in 2006). Additionally, 52% of Indigenous people (25-64 years old) hold post-secondary qualifications (47% in 2006) as compared to 35% of Indigenous people (25-64 years of age) living on-reserve (unchanged since 2006).

106. In 2013-2014, the Government of Canada provided over $13 billion in support of post-secondary education, which included providing students with financial assistance such as Canada Student Loans and Canada Student Grants.

107.

s.21(1)(a)

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110. Quebec has implement various measures to reduce the discrepancy between the education levels of Indigenous students and those of non-Indigenous students:

- In 2012, a tripartite agreement was signed by the governments of Canada and Quebec and the First Nations Education Council to improve the academic outcomes of Indigenous students. The agreement's main objective is to adequately support First Nations students transferring between the First Nations and Quebec education systems. A second tripartite agreement with the Tshakapesh Institute is about to be finalized.

- From 2012-2016, financial support in the amount of $125,000 per year has been provided to Indigenous friendship centres to provide homework support to Indigenous youth living off reserve and attending school in the Quebec school system.

- The Welcoming and integrating Indigenous students into the college level program is designed to facilitate the access of Indigenous students to college studies by awarding financial assistance to CEGEPs that commit to meeting their specific educational needs. Annually, a dozen institutions take advantage of this program to reach an average of 250 Indigenous students. Funding through the Financial support program for members of Indigenous communities is also available to universities that welcome Indigenous students.

111. In 2010, Alberta signed the Memorandum of Understanding (MOU) for First Nations Education in Alberta with the Assembly of Treaty Chiefs in Alberta and the Government of Canada. In 2013, a Long term strategic action plan outlined the parties' roles and a process for restructuring First Nations education in Alberta on an opt-in basis for First Nations.

112. In 2015, Alberta hosted the Alberta - First Nations Education Summit, which supported discussions with chiefs on how to strengthen the First Nations education system. At the summit, the government advised chiefs that it was in the final planning stages for moving forward with its commitments under the MOU and agreed to work with willing First Nations to create education authorities in order to strengthen education capacity and target the achievement gap for First Nations students.

s.21(1)(a)

113. In 2014, New Brunswick funded twenty initiatives to increase access to post-secondary education for Indigenous students, and to further support them once they enrolled. These projects included specialized recruiting, orientation and bridging activities, cultural trainings, the development of First Nations language resources, and the funding of campus-based Indigenous counsellors and Elders-in-Residence. Special programs were also developed in the fields of nursing, mental health, and Indigenous art.

*General and Vocational Training*

114. The Government of Canada continues to support skills development and training of Indigenous Canadians through a suite of complementary indigenous labour market programs, including the Aboriginal Skills and Employment Training Strategy, the Skills and Partnership Fund, and the First Nations Job Fund.

115. In addition, the government's First Nations and Inuit Youth Employment Strategy supports initiatives to provide youth with work experience, information about career options, and opportunities to develop labour force skills. Since its launch in 2003, approximately 150,000 opportunities have been provided to First Nations and Inuit youth with 600 First Nations and Inuit communities designing and implementing projects each year. s.21(1)(a)

116. Further, in partnership with national and regional Indigenous women's organizations, the federal government is funding projects that provide Indigenous women entrepreneurs with financial literacy training, access to business development tools and access to capital to establish, expand and run viable, sustainable businesses.

117. Manitoba has a number of training programs and initiatives for Indigenous individuals, for example:

- The Manitoba Works! Co-operative Work Experience Program assist those with minimal to no previous work experience, particularly individuals who are on Employment and Income Assistance in the province and Indigenous participants, gain relevant skills, work experience and connect with employers. It incorporates industry specific pre-employment, essential skills and employability skills training, followed by a 3 to 6 month long paid work experience. It is currently being piloted by four community-based service providers and to date over 250 participants have benefited.

- The Child and Youth Care Worker Training Program is a 52 week certificate program aiming to break the cycle of poverty, violence, homeless and isolation faced by urban Indigenous people, particularly for those who have previous experience as a sex trade worker. Upon graduation, participants have the skills and work experience to work in youth serving agencies, specifically helping to deter youth from the sex trade industry. In 2014-2015, 18 participants entered the program and 17 are in the process of completing the program.

- The Northern Construction Trades Training Program provides training to northern Indigenous residents in the trades of Industrial Mechanic, Industrial Electrician and Steamfitter/Pipefitter. The program began in 2015 and will span five years. To date, 32 participants remain in the program.

- The Misipawistik Cree Nation Health Care Aid Training, which delivers a comprehensive Health Care Aid program to address shortages of workers in Grand Rapids and surrounding areas. In 2014-2015, six out of eleven total participants obtained employment upon completion of the program.

118. Quebec also undertakes a number of measures for adult general and vocational training for Indigenous people, including:

- The Agreement concerning the management and operation of the Development and Workforce Training Centre of the Huron-Wendat Nation, which provides educational services to adult Indigenous clients in Quebec school boards or CEGEPs. From 2008 to 2013, 64 students received their high school diploma, 14 students obtained the prerequisites to start college training, and 87 students

obtained the necessary prerequisites to start vocational training. Furthermore, since 2010, the Centre has allowed 317 Indigenous people to obtain their diploma of vocational studies.

- The Agreement on the management and operation of regional adult education centres, which led to the establishment of four adult education centres in four different Indigenous communities. These centres are meant to improve the access of Indigenous people to adult education and allow a greater number of them to obtain a first diploma while remaining in an environment adapted to their reality.

- A Vocational Training Centre for Indigenous people in Construction Trades and Related Sectors, encouraging the integration into the workforce of trained Indigenous groups all across Quebec. Since 2008, over 300 Indigenous students have obtained a vocational school diploma in construction or a related sector as a result of the Centre's activities.

119. Alberta's Ministry of Aboriginal Relations has recently expanded its role to play a more significant role in addressing the employment challenges and barriers that face Indigenous workers. It is coordinating several cross ministry initiatives to decrease barriers to employment, including initiatives targeted at the trades and the ability of Indigenous people to get and maintain a driver's license. In addition, it is working with several industry groups and organizations to increase partnerships between industry and Indigenous communities.

120. More information on employment measures for Indigenous peoples can be found in the 8th and 9th Reports on the CEDAW (paragraphs 54-62).

**Access to housing**

121. The Government of Canada invests an estimated $292 million annually to support the housing needs of First Nations communities. This funding supports the construction of new social housing, the renovation of existing homes, ongoing subsidies for existing social housing and capacity building to assist First Nations in managing their housing portfolio.

s.21(1)(a)

[redacted]

122. With respect to residents of Attawapiskat, the Government of Canada has undertaken $2.2 million in investment for new, sustainable housing. The Attawapiskat First Nation awarded a contract to construct four duplexes in December 2013. The assembly and installation of the duplexes were completed in the fall of 2014. Moreover, in February 2015, the federal government allocated $3.7 million for the purchase, delivery and set up of 13 housing units in the community.

123. The Government of Quebec has worked with the Native Friendship Centre in Val-d'Or to increase the amount of housing available to Indigenous people, including 24 social housing units. In addition, as of March 31, 2015, Quebec bore the operating losses of 1,875 housing units for off-reserve Indigenous people throughout the province and the operating losses of 2,734 social housing units in Nunavik.

**Access to health services**

124. The Government of Canada provides access to clinical care services 24/7 in 80 remote and isolated First Nations communities serving approximately 91,000 individuals, where access to provincial or territorial healthcare services is limited.

125. In addition, the Non-Insured Health Benefits Program provides eligible First Nations and Inuit people with coverage for drugs, dental care, vision care, medical supplies/equipment, short-term crisis intervention mental health counseling, and medical transportation to access medically-required health services not available on-reserve or in the community of residence. In 2015-2016, the Program supported 808,000 eligible clients.

s.21(1)(a)

126. Indigenous citizens in Newfoundland and Labrador have access to the full range of health care services in the province. There are certain communities where the Band or Indigenous government provides some or all primary health care services, and there is close collaboration with regional health authorities and Health Canada for the provision of services outside the range of what is offered within the community. Other initiatives aimed at supporting Indigenous patients in the health care system include the following:

- An Indigenous patient navigator program and interpretation services to support Indigenous patients who are referred to St. John's for medical treatment.
- The government's active participation in the tripartite Innu Healing Strategy at the Innu Round Table.
- The development, in collaboration with Indigenous communities, of cultural awareness training materials for health professionals to enhance the provision of culturally appropriate health care.
- The Eastern health's cancer care program, which addresses the unique challenges faced by many Indigenous People when confronted with a cancer diagnosis, including language barriers, cultural differences and geographical isolation from primary care to secondary and tertiary health centres.
- The development of an Innu Medical Glossary for health care providers.

127. Indigenous peoples living in Quebec receive health and social services in the same manner as the general public when they present themselves to health and social services facilities in Quebec. The Government of Quebec made a commitment to non-treaty communities at the Socioeconomic Forum of Mashteuiatsh to ensure the transfer of expertise and knowledge, the connection between health and social services corridors and the supply of secondary and supplementary health services.

128. Manitoba provides funding to the Northern Regional Health Authority for the provision of health care services to northern communities, including First Nations and Métis communities. It also provides funding for medical service provision by physicians in northern communities and for the provision of on-call services and specialist medical services by physicians to these communities.

129. The province also funds Telehealth services, which uses information technology, to enhance access to medical services for all Manitobans, including Indigenous people living in rural and remote areas of the province. For example, through Telehealth, Manitoba First Nations communities currently receive regular child and adolescent mental health and psychiatric consultations.

130. Further, Manitoba is investing in interprofessional primary care teams and innovative services close to home, such as Mobile Clinics, QuickCare Clinics, My Health Teams and the Family Doctor Finder program:

    - Nurse-practitioner-led Mobile Clinics are bringing primary care to smaller, northern and remote populations without regular access to primary care services including First Nations and Métis communities.

    - Nurse-practitioner-led Quick-Care Clinics allow patients with minor health issues to receive care faster while taking pressure off family doctors.

    - My Health Teams includes new interprofessional primary care teams who enable the health care system to provide high-quality primary care to more Manitobans.

    - The Family Doctor Finder program assists Manitobans to find a family physician or Nurse-practitioner within their community.

131. Alberta has a dedicated Aboriginal Health Program which works throughout the province to provide high-quality, accessible and culturally appropriate health services. The province established the Aboriginal Wisdom Council in 2012 to provide guidance and recommendations on service delivery, program design and evaluation for culturally appropriate health service. A Joint Work Plan to Improve Health of First Nations in Alberta was developed in 2014 in collaboration with the federal government and First Nations.

132. The province, through its Fetal Alcohol Spectrum Disorder Service Networks, also consults with Indigenous groups, both on and off-reserve, in their communities to develop and provide culturally relevant and appropriate supports to Indigenous individuals.

133. British Columbia is working in partnership with the First Nations Health Authority to develop an Urban Vancouver Aboriginal Health Strategy bringing together First Nations communities, Indigenous services and community organizations, and partner agencies to identify a unified approach to improving access to services in support of Indigenous health and wellness.

134. Nunavut coordinates and provides out of territory care and is working to increase in-territory services, through strong culturally relevant public health programing, expansion of clinical services (e.g., CT Scanner) and increased utilization of telehealth (e.g., for access to mental health services).

135. In 2011, New Brunswick developed an Action Plan for Mental Health in New Brunswick 2011-2018. This Plan ensures that culturally competent and culturally safe services are available to all, particularly Indigenous and immigrant persons; and that

all New Brunswickers have equal access to effective prevention and treatment of mental illness.

*Jordan's Principle*

136. The Government of Canada is implementing Jordan's Principle to make sure the care of a First Nations child with multiple disabilities requiring multiple service providers will continue if there is a federal and provincial dispute concerning payment of services. Contacts, processes and mechanisms are now in place across the country to coordinate and address potential cases as they arise. To date, most cases brought forward have been resolved prior to progressing to the level of a declared federal and provincial jurisdictional dispute, and there are no unresolved jurisdictional disputes at this time.

**Indigenous children under the care of social services**

137.

s.21(1)(a)

138.

139.

*Provincial and territorial measures*

140. In 2014, the Council of the Federation, comprised of provincial and territorial premiers, discussed the over-representation of Indigenous children under the care of social services. The Council directed the provinces and territories to work with Indigenous communities in their respective jurisdictions to share information on potential solutions to the problem and to improve services provided to children. The premiers acknowledged the need for governments and Indigenous communities to work collectively to address this Canada-wide problem.

141. In 2015, the working group created by the Council released the report *Aboriginal Children in Care – Report to Canada's Premiers*, which identifies promising practices to reduce the number of children in care and improve outcomes for children receiving care. Premiers agreed that the report sets a good foundation for future work and

forwarded it the working group and to provincial and territorial ministers responsible for Social Services for consideration in their own work.

142. There are many programs and services in place across the provinces and territories to reduce the number of Indigenous children in child welfare systems and/or improve outcomes for Indigenous children in care.

143. For example, through the Family Finders Program, Saskatchewan provides First Nations Child and Family Services Agencies with funding to hire staff to recruit, screen, assess and recommend extended family caregivers for First Nations children in the government's care. The goal of the program, while continuing to strive for family reunification wherever possible, is to ensure that First Nations children are placed with next of kin first and foremost. Secondly, when immediate or extended family is unavailable, that First Nations children are placed with First Nations families to continue connection to cultural identity, community and heritage.

144. The Intensive In Home Supports Program provides intensive in-home family supports to ensure the personal safety of children while allowing them to remain within the family home instead of being taken into Social Services' care. Operating throughout Saskatchewan, it is delivered collaboratively with Indigenous partner organizations. From April 2014 to January 2015, approximately 335 families and 830 children took part in the program.

145. Further, while not specifically directed towards Indigenous families, Saskatchewan developed the Flexible Response Pilot Project (FR), which maintains a primary focus on child safety while promoting permanency for children within the family and community and increasing emphasis on engaging children and their families in services. The FR builds on existing strengths to increase families' capacity to care for their children using culturally appropriate services. It was developed in collaboration with First Nations and Métis and the team that determines the most appropriate FR pathway includes Métis and First Nation organizations. From November 2013 to October 2014, with the FR, 49 fewer children entered into the Social Service's care than in the previous year, and transfers to ongoing child protection were reduced by over 50%.

146. Manitoba gives First Nations and Métis people province-wide authority for the delivery of child and family services (which includes foster care). The Child and Family Services Authorities Act establishes four Child and Family Services Authorities (two First Nations Authorities, one Métis Authority and one General Authority) that are responsible for the delivery of child and family services throughout the province.

147. Manitoba also works with First Nations Child and Family Services agencies and Authorities to:

- Develop out-of-home placement resources for children in care on reserve.
- Make recommendations to Child and Family Services Standing Committee on reducing the numbers of children in care through customary care, kinship care and enhanced post-adoption and guardianship subsidies.

148. British Columbia promotes safe alternatives to child removal whenever possible, and the *Child, Family and Community Service Act* specifies that priority must be given to placing an Indigenous child with extended family, their Indigenous cultural community, another Indigenous family, or in a location where the child can maintain contact with their relatives, friends and culture. It is also increasing the use of Family Development Responses, an alternative to more intrusive child protection investigations, with collaborative and supportive approaches to help address a family's issues so that they can safely care for their child and stay together. Additionally, the Aboriginal Service Innovations – Child Safety and Permanence program provides direct services supporting Indigenous children in care to safely return home or, if they cannot, to improve their permanency outcomes.

149. In Nunavut, there is a greater use of extended family supports as a placement resource to have children stay within the larger familial unit rather than have them away from family. Cross sector collaboration strategies are used between government and non-government sectors to create comprehensive intervention strategies which use a whole- of- community response to the delivery of support services.

150. In Nova Scotia, all children of Indigenous descent who come into the permanent care of the Minister are transferred to the Mi'kmaw Family and Children Services agency, which uses family group conferencing to help children remain with their families.

**Indian Residential Schools** s.21(1)(a)

151. The Government of Canada continues to fulfill its obligations under the Indian Residential Schools Settlement Agreement. Many elements of the Agreement are complete or nearing completion. [redacted]

*Truth and Reconciliation Commission*

152. The Truth and Reconciliation Commission (TRC) was created as part of the Indian Residential Schools Settlement Agreement, which was negotiated to find a fair, comprehensive, and lasting resolution to the legacy of the Indian Residential School System. The Commission's mandate was to ~~reveal~~ research and report on the complex truth, history and ongoing legacy of the schools; and, to guide and inspire a process of truth and healing leading to reconciliation within Indigenous families, and between Indigenous peoples and non-Indigenous communities, churches, governments, and Canadians.

153. From 2009-2015, the Commission held seven national events and one closing event; gathered statements and documents about the residential schools and their legacy; recommended commemoration initiatives to the federal government for funding; set up a research centre that will permanently house the Commission's records and documents.

154. In 2015, the Commission issued 94 recommendations, calling upon the Government of Canada and others to address a wide range of Indigenous socio-economic areas such as

child welfare, education, language/culture, health, and the justice system; as well as broader issues including a nation-to-nation relationship, the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and respect for treaties.

155.

**UN Declaration on the Rights of Indigenous Peoples**

156. Five years after Canada's endorsement of the UNDRIP, and to support the work of reconciliation, Canada is strongly committed to building a positive and productive relationship with Indigenous peoples. Governments in Canada will work in partnership with Indigenous peoples to give domestic effect to the UNDRIP and achieve its objectives. Concrete actions have been taken in many areas identified in the UNDRIP such as: economic development, housing, child and family services, education, access to safe drinking water, governance, sharing benefits of natural resources development in traditional Indigenous territories, and extension of human rights and matrimonial real property protection on reserve.

s.21(1)(a)

**Consultation with Indigenous Peoples**

157. With respect to Concluding Observation 20, F-P/T governments in Canada have a legal duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established ~~Indigenous~~ Aboriginal or Treaty rights (e.g. use, allocation or disposal of Crown property; authorization of development and operation of interprovincial pipelines, etc.).

158. Governments in Canada take their obligations regarding the legal duty to consult seriously and have policies in place to provide direction and guidance with respect to consultation. They also undertake a wide variety of efforts to ensure that fair, efficient, accessible, transparent and meaningful consultation occurs when appropriate. For example:

- The Government of Canada supports the whole of government approach to Indigenous consultation by developing policy, tools and training for federal officials to fulfill the duty to consult:
  - In 2015, it appointed a Ministerial Special Representative to engage with Indigenous groups, industry and other affected stakeholders on ways to improve the management of Canada's approach to consultation and accommodation.
  - At a regional level, the federal department of Indigenous and Northern Affairs Canada (INAC) acts as a liaison between federal departments, provincial and territorial governments and Indigenous organizations and communities to facilitate relationships on key files. It negotiates consultation arrangements and protocols with Indigenous groups and provinces and territories to achieve coordinated, efficient consultation processes.

- In 2014, Alberta prepared a draft Policy on Consultation with Métis Settlements on Land and Natural Resource Management. The Métis Settlements were actively engaged in the development of the draft Policy and all eight Settlements indicated their support for the draft prior to final approval of the Policy, which was received in 2015.

- In 2014, the Northwest Territories Intergovernmental Agreement on Lands and Resources Management, between the Government of Northwest Territories and various Indigenous governments, formalized government to government relationships and allowed the further development of agreements or other arrangements for cooperative and coordinated management of lands and resources, recognizing the rights, titles, jurisdiction and authority of each party.

- In 2013, Newfoundland and Labrador released its Aboriginal Consultation Policy supporting and encouraging sustainable economic development and ensuring that Indigenous governments and organizations with asserted rights are given opportunity to raise any potential adverse impacts on those rights from developmental activities.

- In 2010, Saskatchewan instituted the First Nation and Métis Consultation Policy Framework providing direction to all provincial government ministries, Crown corporations, and agencies. In 2012, a Legislative Renewal Committee with First Nations and Métis membership was established to facilitate collaboration, engagement and communication of the legislative review process with First Nations and Métis.

- Ontario has incorporated specific provisions respecting consultation with Indigenous peoples into key pieces of legislation such as the 2011 Far North Act, the 2009 Green Energy Act and the 2009 Mining Act amendments.

- In 2009, Manitoba's Interim Provincial Policy on Crown Consultation with First Nations, Metis Communities and Other Indigenous Communities came into effect. One of the objectives of this policy is to advance the process of reconciliation.

- In 2008, Quebec developed the Interim Guide for Consulting the Indigenous Communities, which provides guidelines that operationalize the government's constitutional duty to consult.

- The Government of Nunavut has specific consultation obligations to consult with Inuit under the Nunavut Land Claims Agreement. All land management and natural resource issues go through the proscribed process. All major legislation, policies and programs created by the government go through multiple levels of consultation from design to implementation.

**~~Indigenous~~ Aboriginal title and land claims**

159. Since 1973, Canada and its negotiation partners have signed 26 comprehensive land claims and four self-government agreements. These settlements have provided Indigenous ownership over 600,000 km² of land; capital transfers of over $3.2 billion; access to resource development opportunities; participation in land and resources

management decisions; certainty with respect to Indigenous land rights in approximately 40% of Canada's land mass; and associated self-government rights and political recognition.

*Crown-Indigenous relationships*

160. Preceding centuries of events and demographic, geographical, and legal influences have resulted in distinct legal and policy frameworks and unique Crown-Indigenous relationships. Section 35 of the *Constitution Act (1982)* and the *Indian Act* are the touchstones of Crown-Indigenous relationships: the former recognizes and affirms existing ~~Indigenous~~ Aboriginal and treaty rights and the latter exercises federal jurisdiction over Indians and lands reserved for Indians.

161. In 2014, the Supreme Court of Canada made a landmark decision in the case of *Tsilhqot'in Nation v. British Columbia*, [2014] 2 S.C.R. 256. The Court made the first declaration of ~~Indigenous~~ Aboriginal title to a specific parcel of land in Canada, finding that the Tsilhqot'in Nation have title to approximately 1750 square kilometers of land in British Columbia. The Court confirmed that the general requirements for establishing ~~Indigenous~~ Aboriginal title are: (1) sufficient occupation of the land claimed at the time of assertion of European sovereignty; (2) continuity of occupation where present occupation is relied on as proof of occupation pre-sovereignty; and (3) exclusive historic occupation.

162. The Court further considered the Crown's duty to consult under s. 35 of the *Constitution Act, 1982*. The Court confirmed that where ~~Indigenous~~ Aboriginal title is asserted, but has not yet been established, s. 35 requires the Crown to consult with the claimant group and, if appropriate, accommodate its interests. The required level of consultation and accommodation increases with the strength of the claim for title, and for particularly strong claims, the Crown must take care to preserve the ~~Indigenous~~ Aboriginal interest before the claim is resolved. The Court further found that once ~~Indigenous~~ Aboriginal title is established, s. 35 permits incursions on it only with the consent of the title holder or where justified by a compelling and substantial public purpose and not otherwise inconsistent with the Crown's fiduciary duty to the Indigenous group.

s.21(1)(a)

*Specific Claims Tribunal*

163.

164. In 2008, the Special Claims Tribunal was established as an independent adjudicative body under the *Specific Claims Tribunal Act*, with the authority to make binding decisions in respect to the validity of specific claims and to make monetary compensation awards up to a maximum of $150 million.

165. In accordance with the Act, a five-year review of the mandate, structure, and efficiency and effectiveness of operations of the Specific Claims Tribunal was undertaken in 2014-2015. In 2015, a Minister's special representative ~~met with~~received input from various First Nations, Indigenous Representative Organizations and other ~~stakeholders~~interested parties, to seek views on the mandate.

structure and operation of the Tribunal. The Minister of INAC will report to Parliament on the review.

*Treaty Commissions*

166. The British Columbia Treaty Commission was established in 1992 by agreement among the governments of Canada and British Columbia and the First Nations Summit, the political organization that represents First Nations as a principal to the treaty process. It oversees modern treaty negotiations in the province, is responsible for the allocation of negotiation support funding to First Nations and provides public information and education about the British Columbia treaty process.

167. The Office of the Treaty Commissioner in Saskatchewan and the Treaty Relations Commission of Manitoba have a pre-1975 treaty focus and are arm's length organizations mandated to facilitate discussions to reach common understandings on treaty issues, to undertake treaty research and public education and awareness activities and to develop partnerships between the treaty parties and other key stakeholders to support reconciliation and strengthen the treaty relationship. There has been growing interest in additional pre-1975 treaty commissions and enhanced roles for existing treaty commissions. Discussions with treaty partners have been ongoing.

s.21(1)(a)

s.23

## V. JUSTICE

168. This section focusses on Concluding Observations 11, 12 and 21. It includes information on the prevention of racial discrimination in the criminal justice system, on measures to reduce the rate of incarceration of Indigenous people and on measures facilitating access to justice.

### Prevention of racial discrimination in the criminal justice system

169. Regarding Concluding Observation 11, governments in Canada have put in place many measures to ensure that the criminal justice system is free of bias.

***Bias-free policing***

170. The Canadian national police service, the RCMP, has a clear policy on bias-free policing, and consistently aims to provide equitable policing services to all persons while respecting diversity.

171. Under Ontario's Officer Code of Conduct Regulation, it is an offence for a police officer to engage in any sort of racist or discriminatory behavior. The Adequacy and Effectiveness of Police Services Regulation also requires a police services board to have a policy on investigations into hate/bias motivated crime.

172. In 2015, Ontario posted a Draft Regulation on Carding and Street Checks for public input that will establish clear and consistent rules to protect civil liberties during voluntary police-public interactions where police are seeking to collect identifying information, ensuring that they are conducted without bias or discrimination, and done in a manner that promotes public confidence and keeps communities safe. The regulation reflects input and feedback received by policing, civil liberties, privacy and

community organizations, and by ethnic and cultural groups. Once in force, it will be mandatory for every police service in Ontario.

173. Since 2005, Quebec has established a police sector committee on racial profiling and is coordinating the implementation of measures to prevent discrimination and racial profiling within police organizations. Currently, the committee is designing an operationalization guide for prevention, detection and intervention with respect to racial and social profiling.

174. Further, as part of the measures established by its Diversity: An Added Value action plan, the programs at Quebec's police school have integrated components on racial profiling and intervention in the context of ethnocultural diversity, and the guide of police practices was revised to include a statement on addressing racism and discrimination.

175. In response to recommendations from the 2012 Missing Women Commission of Inquiry, the *British Columbia Police Act* was amended to make possible the creation of binding provincial policing standards on the promotion of unbiased policing in British Columbia. Such standards are presently under consideration.

**Training on the principles of the Convention**

*Training of prosecutors*

176. The Public Prosecution Service of Canada provides cultural sensitivity and awareness training for its prosecutors, and especially for those prosecutors who regularly deal with Indigenous offenders. For example, in 2013, the Nunavut Regional Office developed an internal online Inuit Awareness program designed to introduce prosecutors who work and live in Nunavut to the many dimensions of legal practice in Nunavut and how the law in Nunavut is influenced in many ways by Inuit perspectives and culture.

177. Federal public prosecutors also are trained to consider an accused's motivation when deciding whether to initiate and conduct a prosecution, and in particular any bias, prejudice or hate based on race, national or ethnic origin, language, religion, gender, age, mental or physical disability, sexual orientation, or any other similar factors. At the same time, prosecutors are taught to ensure that decisions to prosecute must not be influenced by the race, national or ethnic origin, colour, religion, sex, sexual orientation, political associations, activities or beliefs of the accused or any other person involved in the investigation.

s.21(1)(a)

178. In 2014, the Director of Criminal and Penal Prosecutions with Quebec's Department of Justice organized a training session for prosecutors with a view to raising awareness about domestic violence and Indigenous realities.

*Training of judges*

179. Following Canada's appearance before the Committee in 2012, the Government of Canada shared the Committee's recommendations with the National Judicial Institute, which is primarily responsible for co-ordinating judicial education in Canada. The Institute is jointly funded by federal, provincial and territorial governments, but is an

independent corporation managed by a Board of Governors and chaired by the Chief Justice of the Supreme Court of Canada.

180. The Institute places a strong emphasis on sensitivity programs relevant to the implementation of the Convention. Indigenous issues, racial and cultural considerations, and inter-cultural communications have been identified as areas that deserve particular attention in judicial education. These topics have been included in numerous substantive law seminars, such as national programs on Indigenous Law, Criminal Law, the *Canadian Charter of Rights and Freedoms*, and the Law of Evidence, which are typically offered on an annual or bi-annual basis. In addition, every two to three years, a national course on Indigenous considerations is developed that focuses on regional issues or on an over-arching topic. For example, in 2013 a full conference was devoted to Indigenous issues arising in Canada's Prairie Provinces. The Institute also assists with court-based programs provided to all federally appointed judges. Each court offers one to two training sessions per year, many of which address cultural sensitivity and equality rights.

181. Every year, the Ontario Judicial Council approves the continuing education plan for provincial judges, which provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, the *Canadian Charter of Rights and freedom*, skills training and social context.

*Training of lawyers and judicial stakeholders*

182. Governments have been focusing significant efforts on deepening knowledge of Canada's international human rights commitments, including of the provisions of the Convention, among public servants and strengthening their capacity to consider Canada's obligations in their work. For example, in 2014 the Department of Justice Canada developed a course for Government lawyers on Equality and Non-Discrimination Rights in International Human Rights Law, through which Government lawyers can deepen their knowledge of Canada's obligations with respect to equality and non-discrimination, including its obligations under the Convention.

s.21(1)(a)

183. Work is underway in Quebec to include measures for awareness training to prosecutors, justice officials and administrative staff of the courts on the various cultural realities in the new Policy on Immigration, Participation and Inclusion.

184. In 2014, through the Crime Victims Assistance Centre, professionals and lawyers from the Quebec Department of Justice and the Director of Criminal and Penal Prosecutions attended a one-day awareness-raising workshop on Indigenous myths and realities.

185. In Ontario, conferences and seminars are organized by the Ministry of the Attorney General, the Ontario Crown Attorneys Association and the Association of Law Officers of the Crown on human rights principles and cases as part of continuing education programs.

186. Northwest Territories lawyers employed by the territorial government participate in Indigenous Cultural Awareness Training.

*Police training*

187. The RCMP Cadet Training Program includes extensive curriculum designed to inform cadets of concepts relevant to racial discrimination and hate crimes, as defined respectively by the *Canadian Human Rights Act* and *Criminal Code*. This curriculum is supported by additional training in ethics and bias-free policing. The RCMP has delivered unconscious bias training to officers and executives to develop an awareness of possible cultural or gender biases.

188. RCMP officers transferred to the Northwest Territories participate in a community orientation program upon arrival to increase communications and cross-cultural understanding. This allows police officer to be better engaged when meeting and working with community residents, including Elders, in their homes, in the community, or at formal gatherings.

s.21(1)(a)

189. Quebec's police techniques training program offers training on how to interact with clients who belong to various cultural and ethnic communities; interpret the ways individuals think and act based on their cultural or ethnic background; recognize signs of intolerance towards these individuals; and assess their ability to connect with them.

190. The initial training program on police patrolling at the Quebec National Police Academy includes training on the concepts of social and racial profiling, and is based on legal precedent, while allowing the aspiring police officer to identify contexts in which he or she would be at risk of unlawful profiling, and ways of preventing profiling.

191. Furthermore, several police forces across Quebec have a directive on racial profiling, which is often presented to all police officers in the form of a training session.

192. The Ontario Police College develops the Basic Constable Training, which all police recruits in Ontario take after they are hired by a police service. Some of the courses relate to diversity and professional practice and include: Introduction to Diversity and Professional Practice; Policing in Changing Demographics and Hate Crimes; and Aboriginal Awareness and Integrated Simulations.

193. Ontario Provincial Police recruit training includes a review of a section of policy on police and motorist relations that contains language stating that illegal profiling is not permitted and shall not be tolerated in any respect. In courses being offered, the prohibition on illegal profiling is reinforced through vehicle stop scenarios and discussions on human rights legislation.

**African Canadians in the criminal justice system**

194. Race, ethnicity or visible minority status of accused and offenders is not collected nationally; therefore, the number of African Canadians who are involved in the Canadian criminal justice system is not known. The closest proxy is the federal correctional system, for offenders serving a correctional sentence of two or more years. In 2012-2013, 8.9% of federal offenders self-reported as Black[2], while

[2] Corrections and Conditional Release Statistical Overview, 2013 Annual Report, Public Safety Canada

according to the 2011 National Household Survey, African Canadians made up only 2.9% of the population. Between 2008-2009 and 2012-2013, the number of Black offenders in the federal correctional system increased by 1.5% while the increase in the general Canadian population from 2006 to 2011 was 0.4%. In 2011-2012, most federal Black offenders were male (96%), young (under age 30) (50%), and incarcerated for a violent offence (50%).[3]

*Treatment of African Canadians in the criminal justice system*

195. In 2012-2013, the Office of the Correctional Investigator, which serves as an ombudsman for federally sentenced offenders, conducted a review of the experiences and outcomes of African Canadian inmates in federal custody. Findings of this review can be found in *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*[4] and the Correctional Investigator's recommendations can be found in his 2012-2013 Annual Report.[5] The Government of Canada responded to the recommendations[6] and continues to take them into consideration such as in the current revision process of its directive on Ethnocultural Offenders: Services and Interventions.

196. The federal government continues to deliver ethnocultural specific services and interventions for offenders; provide cross-cultural training to staff across the country; has dedicated national and regional ethnocultural services positions; and, is working with ethnocultural advisory committees. The government is currently developing an Ethnocultural Offenders National Strategy to enhance its capacities to provide effective services, programs, and interventions that address the needs of ethnocultural offenders and contribute to their successful reintegration. s.21(1)(a)

## Incarceration of Indigenous peoples

197. In its Concluding Observation 12, the Committee expressed concerns regarding by the high rate of incarceration of Indigenous people, including Indigenous women, in Canada. Governments in Canada are undertaking various measures to address this issue and providing specific programs to divert Indigenous offenders from the criminal justice system where appropriate.

198. While Indigenous people represent approximately 3% of Canada's adult population in 2013-2014, 24% of admissions in provincial and territorial sentenced custody and 20% of those in federal sentenced custody were Indigenous.

### Alternatives to imprisonment

199. Canada's *Criminal Code* provides courts with a spectrum of sanctions that can be imposed in furtherance of the fundamental purpose and principles of sentencing. Other

[3] A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, see www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20131126-eng.pdf.
[4] Ibid.
[5] Annual Report of the Office of the Correctional Investigator 2012-2013, see www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf.
[6] See: www.csc-scc.gc.ca/publications/005007-2802-eng.shtml.

than imprisonment, courts may impose: conditional or absolute discharges; probation orders; intermittent sentences, fines, or restitution; or conditional sentences of imprisonment. Conditional sentences of imprisonment are sentences of imprisonment of less than 2 years that may be served in the community.

200. In determining a proportionate sentence, courts must take into account sentencing principles described in the *Criminal Code*, including the principle of restraint in the use of imprisonment which directs courts to consider for all offenders all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of Indigenous offenders, as set out in section 718.2(e). In the case of *R. v. Gladue*[7], the Supreme Court of Canada recognized the importance of this principle and concluded that applying it does not give preferential treatment to Indigenous offenders, but seeks to treat them fairly by recognizing that their circumstances are different. It requires judges to consider the extent to which background and systemic factors unique to Indigenous have played a part in bringing them before the Court, and to consider restorative approaches that take into account their Indigenous heritage or connection.

201. The Supreme Court of Canada recently re-considered the principle of restraint with respect to Indigenous offenders in *R. v. Ipeelee* (2012). It held that section 718.2(e) of the Criminal Code must be applied to the sentencing of all Indigenous offenders, including those convicted of serious offences. The Court held that, absent a waiver by the Indigenous offender, failure to apply section 718.2(e) would be a legal error that "would also result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality."[8] The Court held that the information revealed pursuant to section 718.2(e) is essential to contextualize the crimes committed by Indigenous offenders. It is anticipated that the Ipeelee decision will reduce the number of incarcerated Indigenous persons.

s.21(1)(a)

[redacted]

202. In 2015, Quebec's Department of Justice established an administrative procedure to ensure compliance with the obligations set out by the Supreme Court in the Gladue and Ipeelee decisions. This procedure summarizes the various steps in the processing of a case, from the court order to the tabling of the report by the organization responsible for the payment of fees. It includes the obligations and responsibilities of each stakeholder affected by the drafting of a Gladue report.[9]

203. In Quebec, the court can also order the drafting of a pre-sentencing report (PSR) concerning an Indigenous offender (PSR Indigenous component) from the Ministry of Public Security's correctional services. Available since 2015, this PSR is an adapted version of the PSR that is normally drafted. It aims to inform the court about the circumstances of Indigenous offenders under the sentencing and to promote the application of section 718.2(e) of the Criminal Code. The adapted PSR considers the historical and systemic factors specific to the Indigenous reality of the person with a direct or indirect impact on the analysis of the situation where they are in conflict with the law as well as the evaluation of the person's reintegration potential. The adapted

[7] *R. v. Gladue*, [1999] 1 S.C.R. 688.
[8] *R. v. Ipeelee*, 2012 SCC 13 at para. 87, online: http://canlii.ca/t/fqq00.
[9] A Gladue report is a form of pre-sentence report tailored to the specific circumstances of Indigenous offenders: see www.provincialcourt.bc.ca/about-the-court/faq.

PSR emphasizes reintegration measures that take into account the Indigenous culture and attachments of the offender. Probation officers received training specifically on the PSR adapted to the specificities of Indigenous clients and a guide for the evaluation of indigenous people in a pre-sentencing context was available to them.

204. Since the 1999 Gladue decision, probation officers in British Columbia prepare a pre-sentence report that includes a section entitled "Sentencing considerations for Indigenous offenders." This section is guided in content by policy in an effort to be responsive to the sentencing principles for Indigenous offenders. To form the content of the pre-sentencing report, probation officers work with Aboriginal Justice Strategy workers and Aboriginal courtworkers to make recommendations to the court for the Indigenous offender to serve a sentence in the community where appropriate.

205. The Government of Prince Edward Island has recently launched a one year pilot program to contract with the Mi'kmaq Confederacy of PEI to provide Gladue reports.

206. In 2014, Ontario approved a pre-sentence report policy, which includes specific direction to probation and parole officers to research the unique circumstances arising from or specific to Indigenous heritage and reference them in Indigenous offenders' reports. Judges use the reports to consider all available sanctions other than imprisonment that are reasonable, with particular attention to the circumstances of Indigenous offenders. Between July 2013 and June 2015, Ontario courts ordered 1,494 pre-sentence reports for offenders who identified themselves as Indigenous.

**Aboriginal Justice Strategy**

207. The Aboriginal Justice Strategy (AJS) supports innovative culturally-relevant justice programs aimed at reducing rates of crime, victimization and incarceration among Indigenous people. The AJS now funds approximately 275 programs that reach over 800 urban, rural, and Northern communities, both on and off-reserve.

s.21(1)(a)

208. Working in collaboration with provincial and territorial governments and in partnership with Indigenous communities across Canada, the AJS is helping Indigenous people assume greater responsibility for the administration of justice in their communities in an effort to reduce rates of crime, victimization and incarceration. Recent examples include:

- The Miapukek First Nation in Newfoundland and Labrador delivers a Healing and Sentencing Program in their community.
- The Mi'kmaq Confederacy of Prince Edward Island provides an Aboriginal Justice Program to all Indigenous people on the island. In addition, the Confederacy has also successfully obtained AJS capacity-building funds to organize an Atlantic Region Circle Keepers training.
- The AJS operates in 34 communities in British Columbia and provides community-based services that range from court diversion to the re-integration of offenders returning from custody centres.
- Thirty Community Justice Committees operate throughout the Northwest Territories allowing Indigenous communities to play a greater role in

the local administration of justice by providing timely and effective alternatives to the mainstream justice process, where appropriate.

- New Brunswick is placing greater emphasis on community-based sanctions through conditional sentences, probation orders and, in the near future, electronic monitoring to reduce the use of incarceration and continues to support First Nations applications to the AJS.

209. A recent recidivism study points to decreasing rates of re-offending among persons participating in AJS funded programs. Offenders that participate in these programs are 90% less likely to re-offend in the year following program completion, and 68% of participants had not re-offended 8 years after completing them. These lower rates of re-offending contribute to reducing crime and incarceration rates in communities with access to these programs.

*Other measures*

210. In 2001, Quebec established an alternatives program for Indigenous communities in places where justice committees are active. This program is the responsibility of the Director of Criminal and Penal Prosecutions (DPCP) and is subject to the conclusion of an agreement between the DPCP and a justice committee. This program has been completely revised and adapted to current Indigenous reality. It promotes greater participation of Indigenous communities in solving social problems within their milieu.

s.21(1)(a)

211. In 2007, Ontario began pre-charge screening relating to criminal investigations involving offenders from remote Indigenous communities. Crown counsel are available to officers from designated local police forces for advice regarding appropriate charges in non-custodial matters, diversion, and for direction in the completion of Crown briefs. Each location has developed its own local framework and protocol with the police for dealing with charges, procedures, diversions, and training. The objectives of the project are to reduce the number of unnecessary charges, increase the number of diversions, improve the quality of Crown briefs and readiness for trial, facilitate early resolutions, improve communication with the police working in remote First Nations communities, and provide training to police to improve understanding of charging practices and viability of charges.

212. In addition to these pre-charge screening, bail consultations have also been carried out in certain communities by the charge screening Crown counsel who works with police to formulate release plans and explore sureties while the accused persons are still in their community. Since inception, substantial numbers of accused persons have been released as a result of consultation, rather than being remanded in custody to be brought to bail court.

213. In Saskatchewan, in accordance with section 717(1), about 2,700 adult alternative measures cases are referred annually by police and Crown prosecutors and handled by non-profits and Indigenous organizations. Over 80% of the cases reach an agreement about how the offender will resolve the matter, and over 90% of agreements are completed successfully.

214. Nova Scotia, through its work with the Mi'kmaw Legal Support Network, which is fully endorsed by the 13 First Nations Chiefs in Nova Scotia, supports a robust restorative justice model which allows for a broad range of offences to be dealt with outside the traditional court process, through a restorative justice process run by and for Indigenous peoples.

215. The Northwest Territories' diversion program continues to be important for many Community Justice Committees. Between April 2014 and March 2015, 311 cases were diverted from the formal criminal justice system.

216. In Nunavut, diversions are awarded by judges where appropriate and when available. There are Community Justice Committees in many of Nunavut's communities that emphasize crime prevention and healing at the community level in order to shift reliance away from formal charges, court appearances and incarceration.

217. Newfoundland and Labrador's Child Youth and Family Services operate an Extra-Judicial Sanction program for youth through community members. This is not indigenous specific, however inclusive of Indigenous youth.

**Training**

*Judges*

218. Following Canada's appearance before the Committee in 2012, the Government of Canada shared the Committee's recommendations with the National Judicial Institute (NJI), which has primary responsibility for coordinating judicial education in Canada, highlighting the Committee's recommendation that Canada train its prosecutors, judges, lawyers and police officers on subsections 717(1), 718.2(e) and 742.1 of the *Criminal Code*.

219. Sentencing principles for Indigenous offenders are featured in many of the NJI's programs, including a six-day annual program offered to new judges. Supplementing the more traditional instructor-led programming is a library of electronic bench books that the NJI has created in collaboration with judges and academics. These electronic resources include materials on sentencing principles, Indigenous law and human rights.

220. Manitoba's Provincial Court judges have included these provisions of the *Criminal Code* as a topic of their annual education sessions, and their 2014 educational program included a presentation on the *Ipeelee* and *Gladue* decisions.

*Prosecutors and lawyers*

221. The Public Prosecution Service of Canada (PPSC) provides ongoing training to its prosecutors on alternative sentencing principles for Indigenous offenders and to ensure that they are conscious, aware and knowledgeable of restorative justice trends in different parts of the country. Many training and educational opportunities on community justice or restorative justice initiatives have been made available. The PPSC's northern offices, where Indigenous populations are the largest, have taken special steps to ensure that prosecutors are knowledgeable of this area of the law.

s.21(1)(a)

222. The Ontario Crown Attorneys Association, in conjunction with the Ministry of the Attorney General, organizes annual education courses for Ontario prosecutors (running about 5 days in length). Two relevant courses are the Sentencing and Aboriginal Justice courses. The Sentencing course covers general sentencing principles. The Aboriginal Justice course discusses the application of *R. v. Gladue* to the daily work of a prosecutor, which includes consideration of all alternatives to custody (i.e. s. 717(1)), as well as s. 718.2(e) and its relationship with the other sentencing provisions in the *Criminal Code*.

223. Prince Edward Island's Aboriginal Justice Program hosts an annual Aboriginal Justice Forum which brings together justice officials, members of the judiciary, law enforcement, crown attorneys, legal aid attorneys, correctional services staff and leaders of the Indigenous community. In 2015, the 9th annual forum explored the significance and impact of the Gladue and Ipeelee decisions and how they can be applied in the administration of justice, and how Gladue Reports are prepared and their role in a restorative justice model.

*Police*

224. Alternative Measures, Restorative Justice and Community Justice Forums are integrated into the RCMP Cadet Training Program at various points throughout the curriculum, and Section 718(2) concepts are discussed. Community consultative groups, the *Youth Criminal Justice Act* and response options for Community Justice Forums, extrajudicial measures, and current diversionary or alternative measures are also taught.

**Access to justice** s.21(1)(a)

225. The following information is meant to update and complement the detailed information already provided in response to Concluding Observation 21 in the 2014 Interim Report on Access to justice, in paragraphs 247-275.

226. Access to Justice continues to be a priority area of cooperation for F-P/T governments. The Government of Canada, together with the Governments of Alberta and British Columbia, has participated actively in the work of the National Action Committee on Access to Justice in Civil and Family Matters, which published its final report entitled *Access to Civil & Family Justice: A Roadmap for Change*[10] in 2013. The report suggests concrete measures for facilitating access to justice in Canada, recognizing that Justice-related services must be responsive to Canada's culturally-diverse population. The report stresses the need to focus on marginalized groups and communities, including immigrants and Indigenous populations. As a result of the work of the National Action Committee, most provinces and territories are working towards establishing local access to justice bodies.

227. Canadian governments continue to work on the development of an access to justice framework on family, civil and administrative law. In 2014, F-P/T Ministers Responsible for Justice and Public Safety engaged in a discussion around access to

[10] www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf.

justice priorities, and agreed to support efforts to facilitate greater F-P/T collaboration and information-sharing on access to justice priorities.

228. In 2014, Ontario created a new Aboriginal Justice Division within its Ministry of the Attorney General and this division is now leading the development of new programs and services to support Indigenous people in the justice system.

229. British Columbia's Legal Services Society has recently updated their web presence to anyone who self identifies as Indigenous. The website outlines rights held by Indigenous people as well as benefits and services that are available to them. In addition, Indigenous Community Legal Workers continue to be available to provide direct service in the form of information and advice.

s.21(1)(a)

230. Legal Aid Manitoba contracts with an interpretation service that provides real time interpretation of over 110 languages and dialects including all of the Indigenous languages spoken in Manitoba as well as Arabic and several African languages. This service is available 24/7 and is used for Brydges on-call to speak to a lawyer, the intake of applications and certificate work.

*Court Challenges Program*

231. In 2015, the Government of Canada announced that it would update and reinstate a court challenges program.

Indigenous and Northern Affairs Canada
Affaires autochtones et du Nord Canada


# Perspectives and Positions on Free, Prior and Informed Consent - A Federal Perspective

Presentation by Sheilagh Murphy, Assistant Deputy Minister,
Lands and Economic Development Sector

**Panel on Aboriginal Law, Indigenous Frameworks and Regulatory Regimes: Examining the Evolving Landscape**

March 8, 2016

Canada

# Presentation Purpose & Outline

- To present the Crown's views on the concept of Free, Prior and Informed Consent (FPIC) and potential implications for the Canadian mineral exploration and development industry
  - Context
  - Duty to Consult – A Minimum Threshold
  - Beyond the Duty to Consult – Free, Prior and Informed Consent
  - FPIC and Implications for Consultation, Accommodation, and Greater Indigenous Engagement
  - Moving Forward

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# Context - Much work has been done...

***Significant analyses have been undertaken and recommendations made for increasing Indigenous participation in major resource development ...***

# Context - Innovative solutions have been launched...

## Strategic Partnerships Initiative (SPI)

With 15 partnering federal departments and agencies, SPI is an innovative, horizontal program intended to coordinate federal efforts with respect to supporting Aboriginal participation in complex economic opportunities – particularly in the natural resource Sectors:

***West Coast Energy***

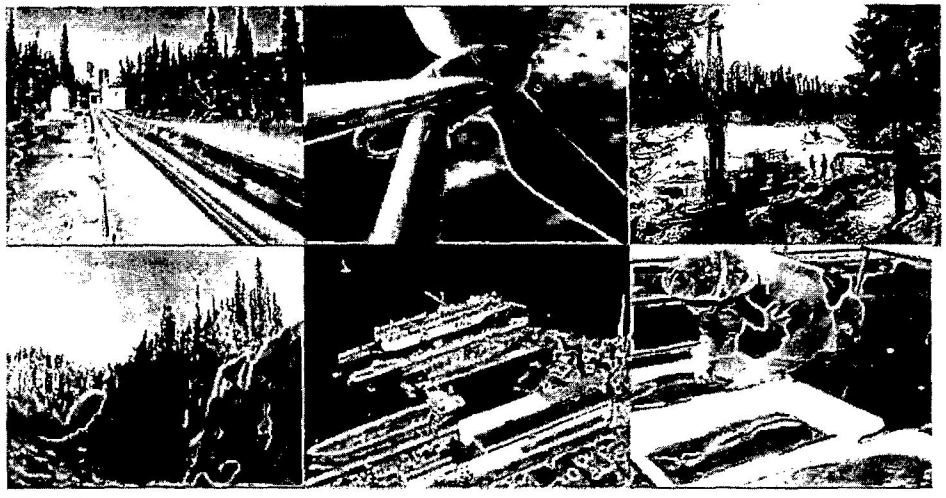
***First Nations Power Authority***

***Labrador Trough***

***Four Rivers Environmental***

***Ring of Fire***

***Shipbuilding***



***Pacific Commercial Fisheries Diversification***

***Lower Churchill Hydroelectric Project***

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# But expectations are changing...

## Community Economic Readiness

"The involvement of Aboriginal communities in natural resource development is both a necessity and a best practice... ensuring that Aboriginal communities are well positioned to take advantage of the economic opportunities presented by resource development in their traditional territories is critical."

*National Aboriginal Economic Development Board*

## Responsible Environmental Stewardship

"Collaborate with the Ministers of Natural Resources, Environment and Climate Change and Fisheries, Oceans and the Canadian Coast Guard to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects."

*Minister of Indigenous and Northern Affairs Mandate Letter*

## New Fiscal Relationship – Benefits and Revenue Sharing

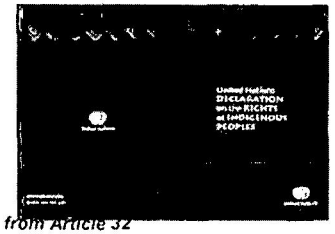
"Federal and provincial/territorial governments should come together with First Nations to discuss options for resource revenue sharing. Resource revenue sharing can bring greater certainty to resource development projects and facilitate greater financial self-reliance for First Nations."

*Regional Chief Cameron Alexis and Douglas Turnbull, co-chairs of the Working Group on Natural Resource Development*

## Collaborative Decision-making

"Free, prior, and informed consent – the right of Indigenous peoples to offer or withhold consent to development that may have an impact on their territories or resources – is the key to development, not a barrier."

*Boreal Leadership Council member Robert Walker of NEI Investments*



*from Article 32*

**1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.**

**2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.**

**"The declaration of Aboriginal Title is a first for Canada. We want to do this right. We need to look after our members and our lands, but we also want to be respectful of others who live and work on our lands. We want to create agreements that benefit everyone on Tsilhqot'in Aboriginal Title lands and incorporate our cultural values."**

*-Chief Roger William, Xeni Gwet'in First Nation and Vice Chair of the Tsilhqot'in National Government*

# And challenges remain...

**"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."**

***Prime Minister Justin Trudeau***

"Aboriginal people are increasingly frustrated with approval processes and project proponents that regard aboriginal interests simply as a risk to be mitigated. Projects are running aground in court challenges and civil disobedience. The need for alternatives to confrontation and litigation is clear. "

*Tim Gitzel, President and CEO of Cameco Corporation*

"Aboriginal peoples' concerns and well-being merit higher priority at all levels and within all branches of government, and across all departments. Concerted measures, based on mutual understanding and real partnership with aboriginal peoples, through their own representative institutions, are vital to establishing long-term solutions".

***United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples – James Anaya***

# The Duty to Consult - A Minimum Threshold

- **The Crown has a duty to consult if three elements exist**
  1. **Contemplated Crown conduct** (e.g., seeking permits and licenses for resource projects)
  2. **Potential or established Aboriginal or Treaty rights** (e.g., hunting, fishing, trapping, other cultural practices related to land, water, air)
  3. **Potential adverse impacts** (e.g., limitations on Aboriginal groups' ability to exercise various rights and cultural practices, could be related to a disruption in wildlife migration patterns and habitat)

➢ **Where the duty arises, the Crown will be required to**

- Carry out a fair and reasonable process for consultations
- Demonstrate reasonable efforts to respond and/accommodate

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# Beyond the Duty to Consult - FPIC

## What does Free, Prior and Informed Consent mean?

### ▪ Meaningful Consultation

"At its core, the concept of free, prior and informed consent is about meaningful consultation with Indigenous peoples on issues of concern to them, which is central to reconciliation."

### ▪ Focus on Fostering Partnerships

"Canada believes that the concept for FPIC should in practice, focus on fostering partnerships to ensure that Indigenous peoples are more fully involved, consulted and, where appropriate accommodated on development initiatives and other decisions that directly affect their rights and interests.

### ▪ Fair and Equitable Balancing of Rights and Interests

"Canada should focus on processes that will encourage and support the fair and equitable balancing of rights and interests between States, Indigenous peoples and, where relevant, third parties."

### ▪ Fulfilling Principles of FPIC

"Canada believes that meeting its constitutional obligations of consultation and accommodation serves to fulfill the principles of "free, prior and informed consent" in the Declaration."

### ▪ Consultation on Impact of Aboriginal or Treaty Rights

"Federal Departments and agencies will consult Indigenous groups where their proposed activity may have an adverse impact on a potential or established Aboriginal or Treaty right."

**"Consent means building relationships on a consensus basis. It is not a question of veto power; rather, it is an opportunity to say yes."**

*James Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*

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# UNDRIP and the Evolution of FPIC in Canada

**"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."**

***Prime Minister Justin Trudeau***

## Government Commitment to Endorse Principles of UNDRIP

UNDRIP ⇨ Lens to Enhancing Relationships with Indigenous Groups

- **Government continues to work towards adopting the principles of UNDRIPwhile respecting Canada's Constitutional framework, including the protection of s. 35 Aboriginal and Treaty Rights and the legal duty to consult**
- **Government commitment to engage with Indigenous leaders and other key partners on the development of a national reconciliation framework**
- **Adoption of the principles of UNDRIP will support the advancement of reconciliation efforts**

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# Potential Areas with FPIC-related Implications

| Where we are now | Items for Discussion | Where it could lead |
|---|---|---|
| **Only Land Claims and Modern Treaties have socio/economic development plans** | Regional planning outside of Land Claim and Treaty processes | - Protocols of engagement<br>- Clarification of roles<br>- Identification of issues and opportunities |
| **Consultation** | - Approach<br>- Renewed relationship with Aboriginal peoples | - Recognition of rights, respect, cooperation and partnership<br>- Earlier Engagement |
| **Environmental Assessment** | Regulatory Review (five principles) | Trust in the process |
| **Infringement of Aboriginal Rights and Title** | - Clarification of Sect. 35 rights<br>- Justification | Increased decision making authority for Indigenous peoples |
| **Different Jurisdictional Approaches to Accommoda0tion** | Role of industry and governments | Enhanced Accommodation e.g. revenue sharing, Impact Benefit Agreements |

# Moving Forward

## Government Commitments

- **Canada is committed to the endorsement of UNDRIP, including FPIC, within the overall context of the Truth and Reconciliation Commission Report recommendations**
  - A Reconciliation Framework will be developed to identify future actions
- Canada is committed to engaging with Indigenous leaders and other key partners on the development of a national reconciliation framework

## Resource Development Initiatives

- **Canada will engage industry as part of the Environmental Assessment Review**
- **Canada will engage industry sector to explore**
  - Changing economic, political, and legal context and impacts on relationships
  - Impediments or opportunities for building successful industry relationships
  - Supporting successful relationships in the natural resource sector
- Moving Forward: Convene a Forum to discuss economic development aspirations
  - Resource Revenue Sharing - Indigenous Engagement

Pages 172 to / à 198
are withheld pursuant to section
sont retenues en vertu de l'article

23

of the Access to Information Act
de la Loi sur l'accès à l'information

## Reynolds, Craig

**From:** Cerretti, Liliana
**Sent:** April 19, 2016 9:56 AM
**To:** McGunigal, Sharon
**Subject:** [redacted]
**Attachments:**

[redacted]

Thank you

Liliana

s.23

**Pages 200 to / à 211**

**are withheld pursuant to section**

**sont retenues en vertu de l'article**

**23**

**of the Access to Information Act**

**de la Loi sur l'accès à l'information**

## Pentney, William

**From:** Hélène Laurendeau <Helene.Laurendeau@aadnc-aandc.gc.ca>
**Sent:** May-09-16 9:52 AM
**To:** les.linklater@pco-bcp.gc.ca
**Cc:** Françoise Ducros; Pentney, William; Francois.Daigle@pco-bcp.gc.ca
**Subject:** Fw: speech.
**Attachments:** UNPFII - FINAL (MOJAG).docx

Les,

[redacted]

>>> "Theis, Rick (AADNC/AANDC)" <rick.theis@canada.ca> 5/9/2016 9:15:02 AM >>>

**s.21(1)(a)**

Sent from my BlackBerry 10 smartphone on the Rogers network.

**From:** Campbell2, Carolyn (AADNC/AANDC) <carolyn.campbell2@canada.ca>
**Sent:** Monday, May 9, 2016 9:11 AM
**To:** Theis, Rick (AADNC/AANDC)
**Subject:** Fw: speech.

Speech. There's no WiFi and I have no way of working here... I might go back to hotel where I have WiFi and send back here to print....

**From:** Smith, Keith <Keith.Smith@justice.gc.ca>
**Sent:** Monday, May 9, 2016 9:02 AM
**To:** Campbell2, Carolyn (AADNC/AANDC)
**Subject:** Fw: speech.

Here you go.

Sent from my BlackBerry 10 smartphone on the Rogers network.

**From:** Smith, Keith <Keith.Smith@justice.gc.ca>
**Sent:** Monday, May 9, 2016 8:31 AM
**To:** Kaitlyn.Pritchard@international.gc.ca
**Subject:** Fw: speech.

Sent from my BlackBerry 10 smartphone on the Rogers network.

**From:** Jody Wilson Raybould <jodywr@shaw.ca>
**Sent:** Monday, May 9, 2016 7:57 AM
**To:** Smith, Keith
**Subject:** speech.

Here is speech. It is ok. :-0

I have it on USB also.

# Special Statement at the Opening Ceremonies of the United Nations Permanent Forum on Indigenous Issues, 15th Session

**Location:** United Nations General Assembly, New York
**Date:** Monday, May 9, 2016, approx. 12:50 pm
**Length:** 10 minutes
**Theme:** "Indigenous peoples: conflict, peace & resolution"

Currently 1365 words (10 minutes)

## *Introduction*

Chief Hill, Mr. Chairman and Members of the Permanent Forum, esteemed representatives of the United Nations, UN Permanent Forum delegates.

I acknowledge our Indigenous hosts and thank them for the welcome onto their ancestral lands.

My traditional name is Puglaas. I come from the Musgamagw Tsawatineuk and Laich-Kwil-Tach people from the westcoast of Canada. I am part of the Eagle clan and my father, Hemas Kla-Lee-Lee-Kla, is our hereditary chief.

I would like to thank you for inviting me to be part of the opening of the 15th session of the Permanent Forum and I am pleased to bring you greetings from our Prime Minister, The Right Honourable Justin Trudeau.

Today I stand before you as the Minister of Justice and Attorney General of Canada – an appointment that speaks volumes to how far our country has come but also how far we intend to go.

## *Indigenous Peoples and the Nation-to-Nation relationship*

I am also honoured to be among a record number of Indigenous Members of Parliament elected last October. I believe that this represents a real change from the time when most Indigenous people were actively discouraged from participating fully in society. This past election saw Indigenous peoples vote in record numbers.

Further, I am extremely proud to be part of a government whose leader has made a solemn commitment to fundamental change... with a vision for true reconciliation with Indigenous peoples.

To this end, our Prime Minister has tasked all of his Ministers to work towards rebuilding the relationship, which is set out in each of our public mandate letters – letters that state, "No relationship is more important to me and to Canada than the one with Indigenous peoples. It is time for a renewed, nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, co-operation and partnership."

That said, this is perhaps, the most challenging area of public policy our Government's priorities seek to address – but this work is necessary and long overdue. We must complete the unfinished business of Confederation. Rebuilding the Nation-to-Nation relationship and achieving reconciliation lies at the heart of a strong Canada.

We need to find long-term solutions to decades old problems as we seek to deconstruct our colonial legacy. Important to this work will be implementing the Calls to Action set out in the recent report of the Truth and Reconciliation Commission which considered the legacy of the Indian Residential schools.

One of the significant challenges to this work is that although strengthening the nation-to-nation relationship is the goal, practically speaking the administration of Indigenous affairs in Canada is not actually organized around Indigenous Nations. For the most part, it is organized around an imposed system of governance. With respect to Indians this is through "bands", which are creatures of federal statute under the *Indian Act*. The *Indian Act* system being the antithesis of self-government as an expression of self-determination.

Simply put we need to move beyond the system of imposed governance.

And I am confident that we have the legal tools to do so. That for Indian, Inuit and Metis peoples we can and will breathe life into section 35 of Canada's Constitution, which recognizes and affirms existing Aboriginal and treaty rights, by embracing the minimum standards articulated in the United Nations Declaration on the Rights of Indigenous peoples and guided by the dozens of court decisions that provide instruction. My colleague and friend, the Honourable Carolyn Bennett, will be making a statement about the Declaration tomorrow.

The challenge moving forward, I submit, is not to fight battles already won, but rather to translate these hard fought for rights into practical and meaningful benefits on the ground in communities.

But as any person who has worked in Indigenous communities in Canada knows, it is not easy to decolonize – it is not easy to throw off the shackles of 140 years of the *Indian Act* system, for example. Indigenous communities are clearly in a period of

transition – of Nation building and rebuilding. Our job as the Government of Canada is to support this transition.

Tied to the fundamental work of Nation rebuilding and implementing the UNDRIP, one of the biggest legal questions we need to unpack is how to implement the concept of "free, prior and informed consent."

The Declaration recognizes that Indigenous peoples have both individual and collective rights. Participation in real decision-making is at the heart of the Declaration's concept of free, prior and informed consent – that Indigenous peoples must be able to participate in making decisions that affect their lives.

There are many facets to the question, differing perspectives, and a number of options. All require a new nation-to-nation relationship – reflected in our unique Constitutional requirements. .

So how do we move forward? As the late Nelson Mandela taught us – beyond the necessary truth telling and healing, reconciliation actually requires laws to change and policies to be rewritten. We intend to do so in full partnership.

There is a need for a national action plan in Canada, something our government has been referring to as a Reconciliation Framework.

In accordance with the Reconciliation Framework, we need more effective and clear ways for recognizing Indigenous Nations and for providing supports in the transition for those Nations that are ready, willing, and able to move beyond the status quo. At the same time, we need to ensure that communities continue to receive necessary programs and services during the period of transition. This work also necessarily includes developing a new fiscal relationship with Indigenous governments.

And we do not need to re-invent the wheel completely. It is important to understand what has worked and why and to build on the success. There are already many positive steps being taken. Within Canada, there are modern treaties and examples of self-government – both comprehensive and sectoral. There are regional and national Indigenous institutions that support Nation rebuilding – for example in land management and financial administration.

The time is right for meaningful and systemic change, to respect and acknowledge the place of Indigenous Nations.

Legitimate and strong Indigenous Nations are, and will increasingly, change the way Canada is governed and for the better. There is room in our country for different legal traditions and ways of governing. An approach that respects diversity and supports the social and economic advancement of Indigenous peoples as part of our evolving system of cooperative federalism and multi-level governance.

For this vision to be realized, Indigenous peoples need to be empowered to take back control of their own lives in partnership and with the full support of all Canadians. For change to occur, communities must go through their own processes of empowerment and local transformation, through healing, rebuilding and capacity development. In doing so, we can continue to make real progress.

## *Conclusion*

And this is not just true for Indigenous peoples in Canada. There are common challenges and opportunities for Indigenous Nations no matter where they exist in the world. And that is why the UN Permanent Forum is such an important mechanism. The bringing together of States and Indigenous peoples to address issues of fundamental importance over the past 15 years has made an immense impact with respect to the recognition of the rights of Indigenous peoples.

There have been two official international decades of the world's Indigenous peoples. I say let us make this the century of the world's Indigenous peoples, one where Indigenous peoples, no matter where they live, deconstruct their colonial legacy and rebuild their communities. Let us make it a century where Nation States and Indigenous peoples work in partnership towards true reconciliation that supports strong and healthy Indigenous peoples that are in charge and in control of their own destinies. This, my friends, is our objective. Where the UNDRIP and the work of this place is a means to end and not the end in itself... The end being an improved quality of life for Indigenous peoples with practicing and thriving cultures.

*Gilakas'la.*

## Pentney, William

**From:** Hélène Laurendeau <Helene.Laurendeau@aadnc-aandc.gc.ca>
**Sent:** May-10-16 11:25 AM
**To:** Pentney, William
**Subject:** Fw: Final speech - needs accents
**Attachments:** NCR-#8733963-v1-Speech_-_French_with_accents.DOCX

**Importance:** High

Fresh of the press.

>>> Marc-André Millaire 5/10/2016 10:56:34 AM >>>
Bonjour à tous,

Please find attached the revised speech with French accents incorporated.

Best regards,

Marc-André Millaire
Conseiller princ. des politiques intérim. / a/Senior Policy Advisor
Politiques et orientation stratégique/ Policy and Strategic Direction
Affaires autochtones et du Nord Canada
Indigenous and Northern Affairs Canada
Tél.: (819) 635-8529
>>>

> **From:** "Campbell2, Carolyn (AADNC/AANDC)" <carolyn.campbell2@canada.ca>
> **To:** Laurendeau, Hélène (AANDC/AADNC)<Helene.Laurendeau@aadnc-aandc.gc.ca>, Ducros, Françoise (AANDC/AADNC)<Francoise.Ducros@aadnc-aandc.gc.ca>, Millaire, Marc-André (AANDC/AADNC)<MarcAndre.Millaire@aadnc-aandc.gc.ca>
> **CC:** "Manchulenko, Lesia (AANDC/AADNC)" <Lesia.Manchulenko@aadnc-aandc.gc.ca>, "Fournier, Claudia (AANDC/AADNC)" <Claudia.Fournier@aadnc-aandc.gc.ca>, "Belair, Marianne (AANDC/AADNC)" <Marianne.Belair@aadnc-aandc.gc.ca>, "Williams2, Sabrina (AADNC/AANDC)" <sabrina.williams2@canada.ca>, "Theis,Rick (AADNC/AANDC)" <rick.theis@canada.ca>
> **Date:** 5/10/2016 10:47 AM
> **Subject:** Final speech - needs accents

Current and almost final. Needs accents and one typo correction – peoples to peoples. Comms – can you do this?

We are doing one more run through

# Speaking Notes

# for

# The Honourable Carolyn Bennett

# Minister of Indigenous and Northern Affairs

## Announcement of Canada's Support for the United Nations Declaration on the Rights of Indigenous Peoples

## United Nations Permanent Forum on Indigenous Issues

## May 10, 2016

## New York City

**Check Against Delivery**

Word count: 1,321 (10 mins)

Mr. Chairperson, Members of the Permanent Forum, before I begin, I want to acknowledge that we are on the traditional territory of the Lenape people.

I would also like to acknowledge elders Willy Littlechild, Sally Webster, and Oliver Boulette, who are a part of our delegation, and who are here with us representing Canada's three distinct Indigenous Peoples – First Nations, Inuit Peoples and the Metis Nation.

Distinguished guests and colleagues, Ladies and Gentlemen, it is an honour to gather with you this morning.

I am so pleased to be here representing the Government of Canada at this forum, and we welcome the important dialogue that will happen here over the next two weeks.

Yesterday, the Honourable Jody Wilson-Raybould, Canada's first Indigenous Minister of Justice and Attorney General, spoke at the opening of this 15th session if the Permanent Forum.

It was such an honour to be here with my colleague and friend.

She continues to inspire not only to Canada but the world.

She is truly a role model for so many, including women, indigenous youth, and all people who strive for social justice.

Canada has traditionally played a key role in the United Nations.

Indeed, Canada has a long history of multilateralism and respect for the values of internationalism.

It recognizes that it is only when we come together as peoples, and as nations, that we can address issues of peace, conflict and resolution.

Former Prime Minister, Lester B. Pearson, the 1957 Noble Peace Prize Laureate, embodied these principles.

The organizers of this year's session have chosen to focus on the theme, Conflict, Peace and Resolution.

The UN Declaration on the Rights of Indigenous Peoples reflects the long struggles of Indigenous peoples for the recognition of their rights.

I would like to acknowledge their tireless efforts and resilience.

These efforts have resulted in a monumental shift in global will to protect the rights, culture, language, dignity and well-being of Indigenous peoples worldwide.

**J'aimerais prendre le temps pour rendre hommage à tous ces leaders.**

Allow me to single out Grand Chief Edward John and his long fight for this Declaration.

He would be the first to say, he was one amongst many.

He's right.

Last week, I had the chance to speak with some of you here today.

It was then that Chief Thompson of Akwasesne reminded us of Chief Deskaheh who, against incredible odds, lobbied the League of Nations nearly one hundred years ago for international recognition of Six Nations.

I was also reminded by Grand Chief John that the progress we are celebrating today also belongs to Member States who were early adopters of the Declaration.

**Le Grand Chef John a aussi souligné la contribution de l'honorable Louise Arbour.**

She was the UN High Commissioner for Human Rights, who pushed hard in Geneva to have the negotiations on UNDRIP completed and supported.

She shepherded its adoption at the UN Human Rights Council.

Today we honour all of their work as we continue the journey.

As the Minister of Justice indicated yesterday, our Prime Minister wrote to every minister and indicated in their mandate letters, and I quote,

"No relationship is more important to me and to Canada than the one with Indigenous peoples. It is time for a renewed relationship with Indigenous peoples, based on recognition of rights, respect, cooperation and partnership."

All of these mandate letters were made public and by doing so, the Prime Minister spoke to all Canadians.

In order to achieve this, today we are addressing Canada's position on the UN Declaration on the Rights of Indigenous Peoples.

I am here to announce on behalf of Canada, that we are now a full supporter of the Declaration, without qualification.

We intend nothing less than to adopt and implement the Declaration in accordance with the Canadian Constitution.

Canada is in a unique position to move forward.

The Calls to Action of the Truth and Reconciliation Commission have helped shed light on a dark chapter of Canada's history, and on the impact of its sad legacy.

We believe the Calls to Action also inform the path forward.

**De plus, Canada est un des seuls pays au monde qui a déjà incorporé les droits des peoples autochtones dans sa Constitution.**

In fact, through section 35 of its Constitution, Canada has a robust framework for the protection of Indigenous rights.

Section 35 of our Constitution, states, "The existing Aboriginal and treaty rights of Aboriginal peoples of Canada are hereby recognized and affirmed."

By adopting and implementing the Declaration, we are breathing life into section 35 and recognizing it as full box of rights for Indigenous peoples.

Canada believes that our constitutional obligations of meaningful consultation and accommodation serves to fulfill the principles of "free, prior and informed consent" in the Declaration.

We see modern treaties and self-government agreements as the ultimate expression of free, prior and informed consent among partners.

Support for these principles was reaffirmed in articles 3 and 20 of the resolutions adopted by the General Assembly, at the World Conference of Indigenous Peoples.

What does all this mean for Canada now?

It means nothing less than a full engagement on how to move forward with adoption and implementation, done in full partnership with First Nations, the Métis Nation and Inuit Peoples.

It will also include Canada's provinces and territories, whose cooperation and support is essential in this work.

Canada has already begun making real the Declaration on the Rights of Indigenous Peoples

Our government believes that a nation-to-nation relationship with Indigenous peoples means partnership on the world stage.

Last year Prime Minister Trudeau invited the leaders of the five major Indigenous organizations to Paris for the conference of the parties on Climate Change.

In March, we were proud as Minister Hadju included Indigenous leaders as members of her delegation at the status of women commission.

We were all inspired as our Prime Minister spoke to the commission as a proud feminist.

At home, we have launched a national public inquiry into missing and murdered Indigenous women and girls

**Nous investissons dans l'éducation et dans le maintien des langues et de la culture autochtones.**

We are investing in housing, infrastructure, health, and child welfare.

While this is a good start, we know much more needs to be done.

Let's be honest, implementing UNDRIP should not be scary.

Recognition of elements of the Declaration began 250 years ago with the Royal Proclamation which was about sharing the land fairly.

It reflects the spirit and intent of the Treaties.

This is an exciting time

I believe that this conversation has begun.

From coast to coast to coast, Canadians are embarking on a journey of reconciliation.

What is needed is fundamental and foundational change.

It's about righting historical wrongs.

It's about shedding our colonial past

It's about writing the next chapter together as partners

I firmly believe that once you know the truth, you can't unknow the truth.

We know the reality of our shared history with Indigenous peoples in Canada.

We now know the truth in Canada of this sordid chapter and we need to embark on the journey of reconciliation.

I want to close today with an image of where I think we need to go as a country.

When speaking to legacy of residential schools, Hereditary Chief, Ray Jones told us of a Gixsan phrase, "Shed Dim Amma gauu dingu mel," meaning, the canoe must be uprighted.

With our commitment to full adoption and implementation to the Declaration today, we are continuing the vital work of reconciliation and working to up right the canoe.

Thank you very much. **Merci, beaucoup, Masi Cho, Qujannamiik, meegwich, marsi.**

## Reynolds, Craig

**From:** Boudreau, Josee
**Sent:** May 12, 2016 3:50 PM
**To:** Becker, Bruce
**Cc:** Bostwick, Edith; Cerretti, Liliana; McGrath, Carla
**Subject:** [redacted] s.23
**Attachments:**

Bruce,

[redacted]

Josée

Josée Boudreau
Legal Counsel / Conseillère juridique
Aboriginal Law Centre / Centre de Droit autochtone
Department of Justice Canada | Ministère de la Justice Canada
275 Sparks Street, 7th Floor | 275, rue Sparks, 7ième étage
Ottawa, Canada K1A 0H8
josee.boudreau@justice.gc.ca
Telephone / Téléphone 613-907-3670
Facsimile / Télécopieur 613-954-4737
Government of Canada | Gouvernement du Canada

**Pages 237 to / à 244**

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# UN Permanent Forum on Indigenous Issues
# Fifteenth Session
# Thursday, May 12, 2016
# Agenda Item 4

## Statement delivered by National Chief Perry Bellegarde
## Assembly of First Nations, Canada

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**JOINT STATEMENT OF:**

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Assembly of First Nations;
First Nations Summit;
Grand Council of the Crees (Eeyou Istchee);
Native Women's Association of Canada;
BC Assembly of First Nations;
Canadian Friends Service Committee (Quakers);
Indigenous World Association;
Amnesty International;
Union of BC Indian Chiefs;
KAIROS;
National Association of Friendship Centres

**CHECK AGAINST DELIVERY**

***Statement delivered by National Chief Perry Bellegarde, AFN***
***UN Permanent Forum on Indigenous Issues, Fifteenth Session***
***Agenda Item 4***

I would like to acknowledge the Chairperson and my Indigenous brothers and sisters from around the world. Greetings, my name is Perry Bellegarde, National Chief of the Assembly of First Nations representing 634 First Nations from across Canada with 1.4 million citizens from 58 different Indigenous nations. I am a member of Little Black Bear First Nation and a citizen of the Cree Nation. Today I am also speaking on behalf of several Indigenous peoples' and human rights organizations, with whom we work in coalition. We greet you all in a humble, respectful way. I would like to acknowledge the hereditary leadership of the Gitsxan, Wet'suwet'en, Haida and Tsimshian Nations and all other Indigenous Nations here today.

We commend Canada for announcing unqualified support for the *UN Declaration on the Rights of Indigenous Peoples*. I would like to lift up Minister Jody Wilson-Raybould and Minister Carolyn Bennett for their statements. This is a critical step to achieving a just and lasting reconciliation between Indigenous peoples and Canada. Now, we look forward to the hard work of translating that expression of support into action as full partners, both in Canada and internationally.

To that end, we welcome the study of the Permanent Forum on how states derogate from the *UN Declaration* using procedural rules in international organizations. For us, this is the modern expression of the Doctrine of Discovery. First Nations know that Procedural violations often lead to Substantive violations. We will not accept states defining our rights in our absence or holding discussions while we observe in silence.

Since we last gathered here, the Truth and Reconciliation Commission (TRC) of Canada submitted its Final Report and 94 Calls to Action. The TRC called upon the federal government, among others, to "*fully* adopt and implement" the *UN Declaration* as the framework for reconciliation. The Prime Minister has agreed to implement all Calls to Action.

Full implementation of the *UN Declaration* will require long-term commitment and collaboration. We need the *UN Declaration* precisely because so many of the laws and policies affecting the lives of Indigenous peoples rest on foundations of colonialism and racism. As the TRC reminded us over and over again, "reconciliation is going to take hard work."

After decades of non-recognition and denial of rights, Indigenous peoples must be full partners in the reform of state laws and policies. The *UN Declaration* provides a framework for the law and policy reform needed to ensure justice and achieve reconciliation, harmonious relations and lasting peace.

Member states have repeatedly denied that Indigenous peoples have the right to exercise self-determination with regard to the development of our lands, territories or resources, even when that development threatens our food sources, our cultures, our security, and our survival as distinct peoples. Such actions have threatened the peace.

Former Special Rapporteur Anaya concluded in 2012: "natural resource extraction and development on or near indigenous territories had become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights."

Recognizing Indigenous peoples' human rights, including the free, prior and informed consent to development on our traditional lands and territories, will lead to greater peace and security for all. FPIC, very simply, is the right to say yes, and the right to say no. It is much more than a process of consultation.

I bring to your attention the recommendation of the Committee on Economic, Social and Cultural Rights, made to Canada earlier this year:

> that the State party fully recognize the right to free, prior and informed consent of indigenous peoples in its laws and policies and apply it in practice. In particular, it recommends that the State party establish effective mechanisms that enable meaningful participation of indigenous peoples in decision-making in relation to development projects being carried out on, or near, their lands or territories. The Committee also recommends that the State party effectively engage indigenous peoples in the formulation of legislation that affects them.

Implementing the *UN Declaration* as a framework for reconciliation will usher in an era based on justice, recognition of rights, and partnership. It will return us to the relationships entered into by our ancestors, relationships founded on peace, security and prosperity for all in Canada and beyond.

Indigenous peoples are calling for the full adoption and implementation of the *UN Declaration* by Canada through a legislative framework. The Private Members Bill C–262 tabled by Indigenous Member of Parliament Romeo Saganash is a floor for action. We welcome discussions on how best to build upon the foundation in his Bill to achieve peace, justice, and well-being.

We recommend that:

- All states honour the commitments made in the Outcome Document of the World Conference on Indigenous Peoples, including the commitment to respect, promote and advance and in no way diminish the rights of Indigenous peoples. Also, national action plans are to be developed, in cooperation with Indigenous Peoples, to implement the *UN Declaration.*

- Legislative frameworks for implementing the *UN Declaration* affirm its central significance in the process of national reconciliation. Such implementation would highlight the importance of harmonizing state laws consistent with the *UN Declaration.*

- National laws, regulations and policies – especially those dealing with resource development – be reformed to ensure that the free, prior and informed consent of Indigenous Peoples is required for any decisions that have the potential for serious impacts on the environment and on their rights.

- States and Indigenous peoples should monitor and report on progress made on the ongoing implementation of the UN Declaration.

Thank you.

## Pentney, William

**From:** van Rooijen, Vanessa on behalf of Wright, Laurie
**Sent:** May-13-16 2:38 PM
**To:** * NLAC Members
**Cc:** * NLAC Executive Assistants
**Subject:** NLAC supporting documents for May 19 / Pièces justificatives CNCJ du 19 mai
**Attachments:** [redacted] Agenda NLAC May 19 2016.doc; [redacted]

s.23

***Message sent on behalf of Laurie Wright, ADM, Public Law and Legislative Services Sector***
***Message envoyé au nom de Laurie Wright, SMA, Secteur du droit public et des services législatifs***

This is to confirm that the National Legal Advisory Committee (NLAC) will be held on Thursday, May 19, 2016 from **1:30 pm to 3:00 pm EST in EMB-3140**. The agenda and supporting documents are attached.

La présente vous confirme que le Comité national de consultation juridique (CNCJ) se réunira jeudi le 19 mai 2016 de **13 h 30 à 15 h HAE dans la pièce ÉCE-3140.** Vous trouverez ci-joint l'ordre du jour et les pièces justificatives.

**Laurie Wright**

Assistant Deputy Minister, Public Law and Legislative Services Sector
Department of Justice Canada / Government of Canada
laurie.wright@justice.gc.ca / Tel : 613-941-7890

Sous-ministre adjointe, Secteur du droit public et des services législatifs
Ministère de la Justice Canada / Gouvernement du Canada
laurie.wright@justice.gc.ca / Tél : 613-941-7890

SERVING CANADIANS

# National Legal Advisory Committee (NLAC) / Comité national de consultation juridique (CNCJ)

## Agenda / Ordre du jour

Date / Date: May 19, 2016 / Le 19 mai 2016
Location / Lieu: EMB / ÉCE-3140
Time / Heure: 1:30 pm - 3:00 pm / 13 h 30 à 15 h

s.23

| | | |
|---|---|---|
| 1. | [redacted]<br>Presented by:<br>Michael Hudson | [redacted]<br>Présente par :<br>Michael Hudson |
| 2. | New matters | Nouvelles affaires |

**Pages 251 to / à 294**

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**sont retenues en vertu de l'article**

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**de la Loi sur l'accès à l'information**

## Bonenfant, Sophie

**From:** Ministerial Liaison Unit
**Sent:** May-19-16 2:04 PM
**To:** Facette, Pierrette; Kwan, Diana; Leduc, Sandra
**Cc:** McGunigal, Sharon; Hudson, Michael; * MLU Group; Diotte, Michelle; Garskey, Adam; Lafleur, Eric; Leclerc, Caroline; Legault, Yanike; Ministerial Liaison Unit; Patry, Claudine; Poliquin, Stéphanie; Rousselle, Sonia; Taschereau, Alexia
**Subject:**
**Attachments:**
**Categories:** Transfered S drive

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Bonjour,

Please be advised that the above-referenced briefing note was approved by the Deputy Minister's office and submitted to the Minister's office on May 19, 2016, **for information.**

Attached for your reference and file is the final e-versions.

Please do not hesitate to contact MLU at MLU-ULM@justice.gc.ca should you have any questions or concerns.

Kindly,

*Isabelle Ethier*
Document Control Officer | Agente de contrôle de documents
Ministerial Liaison Unit | Unité de liaison ministérielle
Department of Justice Canada | Ministère de la Justice Canada
284 Wellington Street, Room 4262| 284, rue Wellington, pièce 4262
Ottawa, Ontario K1A 0H8
Telephone | Téléphone 613-946-6617
isabelle.ethier@justice.gc.ca

Department of Justice Canada | Ministère de la Justice Canada

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**NUMERO DU DOSSIER/FILE #: 2016-011038** s.23
**COTE DE SECURITE/SECURITY CLASSIFICATION: Protected B**

[redacted]

Soumis par (secteur)/Submitted by (Sector): Aboriginal Affairs

Responsable dans l'équipe du SM/Lead in the DM Team: Alexia Taschereau

Revue dans l'ULM par/Edited in the MLU by: Sarah McCulloch

Soumis au CM/Submitted to MO: 19 May 2016

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2016-011038

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# MEMORANDUM FOR THE MINISTER

[redacted]

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[redacted]

**PREPARED BY**
Sharon McGunigal
Senior Counsel
Aboriginal Law Centre
613-907-3623

Michael Hudson
Lead, Task Force on Constitutional Relations
with Indigenous nations
604-775-5173

s.23

## Reynolds, Craig

**From:** Hickey, Wendy
**Sent:** July 29, 2016 1:37 PM
**To:** Morin, Rebecca
**Cc:** Bostwick, Edith; Facette, Pierrette; Leduc, Sandra; Clark, Caroline; Cooling, Cynthia; Arthurs, Cynthia; Marriott, Koren; Lillies, Jennifer Megan; Sanders, Susan
**Subject:** [redacted]
**Attachments:** [redacted]

**Importance:** High

Hi Rebecca,

[redacted]

Many thanks.

Wendy

*Wendy Hickey*
*(613) 907-3606*

**From:** Hickey, Wendy
**Sent:** July 27, 2016 10:14 AM
**To:** Morin, Rebecca <Rebecca.Morin@justice.gc.ca>
**Cc:** Bostwick, Edith <Edith.Bostwick@justice.gc.ca>; Facette, Pierrette <Pierrette.Facette@justice.gc.ca>; Leduc, Sandra <Sandra.Leduc@justice.gc.ca>; Clark, Caroline <Caroline.Clark@justice.gc.ca>; Cooling, Cynthia <Cynthia.Cooling@justice.gc.ca>; Arthurs, Cynthia <Cynthia.Arthurs@justice.gc.ca>; Marriott, Koren <Koren.Marriott@justice.gc.ca>; Lillies, Jennifer Megan <JenniferMegan.Lillies@justice.gc.ca>
**Subject:** [redacted] s.23

Good morning Rebecca,

Please find attached the electronic version of the approval slip, executive summary, briefing note and annexes for the above mentioned matter. I will bring you the hard copy version for ADM review and approval momentarily.

Thanks.

Wendy

*Wendy Hickey*
*(613) 907-3606*

**From:** Morin, Rebecca
**Sent:** July 21, 2016 4:33 PM
**To:** Clark, Caroline <Caroline.Clark@justice.gc.ca>; Hickey, Wendy <Wendy.Hickey@justice.gc.ca>; Cooling, Cynthia <Cynthia.Cooling@justice.gc.ca>
**Cc:** Bostwick, Edith <Edith.Bostwick@justice.gc.ca>; Facette, Pierrette <Pierrette.Facette@justice.gc.ca>; Morin, Rebecca <Rebecca.Morin@justice.gc.ca>; Leduc, Sandra <Sandra.Leduc@justice.gc.ca>
**Subject:**
**Importance:** High

Hi,

Please use the attached approval slip.

Thank you,

s.21(1)(a)

Rebecca

s.23

**From:** Ministerial Liaison Unit
**Sent:** 2016-Jul-21 3:54 PM
**To:** Facette, Pierrette; Kwan, Diana; Leduc, Sandra
**Cc:** * BRLP ADMO Lawyers; Ministerial Liaison Unit; * MLU Group; Taschereau, Alexia; Garskey, Adam; Leclerc, Caroline; Patry, Claudine
**Subject:**

Please use the attached approval slip / Veuillez svp utiliser la fiche d'approbation ci-jointe

| MLU # / # ULM | Due in MLU / Date limite | At / À |
|---|---|---|
| 2016-016277 | July 28, 2016 | 1:00 pm |
| **Lead Sector / Secteur Responsable** | **Consultation** | |
| AAP | BRLP | |
| **Topic / Sujet** | | |
| **Request / Demande** | | |

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Please forward the electronic version (up to Protected B) of the briefing note to MLU-ULM@justice.gc.ca, or "Ministerial Liaison Unit" in the Global Address List. For material containing secret or cabinet confidence information, please bring the documents on a secure USB key to EMB 4262 or 4228. If you have any questions concerning this request, please do not hesitate to contact the MLU.

If this request should have been sent to a different sector, please reply to this email.

Veuillez noter que les notes d'information devraient se limiter à une ou deux pages, et toute information additionnelle devrait être jointe à la note en annexe. Les gabarits à utiliser se retrouvent sur le site intranet JUSnet. **Veuillez utiliser le # ULM mentionné ci-dessus,** et s'assurer que tous les champs de CCM sont adéquats et complétés en conséquence.

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Si cette demande aurait dû être envoyée à un différent secteur, s'il vous plaît répondez à ce courriel.

*Isabelle Ethier*
Document Control Officer | Agente de contrôle de documents
Ministerial Liaison Unit | Unité de liaison ministérielle
Department of Justice Canada | Ministère de la Justice Canada
284 Wellington Street, Room 4262| 284, rue Wellington, pièce 4262
Ottawa, Ontario K1A 0H8
Telephone | Téléphone 613-946-6617
isabelle.ethier@justice.gc.ca

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# Fiche d'approbation
# Approval Slip

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*À remplir par le secteur / To be completed by sector*

DOSSIER/FILE # *2016-016277*

**Objet / Subject:** [redacted]

**Préparée par /**
**Prepared by: Koren Marriott**
**Personnel de soutien /**
**Administrative personnel: Jennifer Megan Lillies**

**Cote de sécurité /**
**Security level: Protected "B"**
**Numéro de téléphone /**
**Telephone number: (613) 907-3614**

**Nombre de pièces jointes /**
**Number of attachments: 4**

**Date limite à l'ULM /**
**Due at MLU:** _____

| **Soumise pour approbation à / Sector approvals as required** | **Initiales / Initials** | **Année / Year** | **Mois / Month** | **Journée / Day** |
|---|---|---|---|---|
| Edith Bostwick, Director and General Counsel, Aboriginal Law Centre | _____ | 2016 | 07 | 29 |
| Caroline Clark, A/Director General and Senior General Counsel, Aboriginal Law Centre | _____ | 2016 | 07 | 29 |
| Pamela McCurry, Assistant Deputy Minister, Aboriginal Affairs Portfolio | _____ | 2016 | 07 | _____ |
| Resources consulted:<br>• Business and Regulatory Law Portfolio<br>• Policy Sector<br>• INAC LSU (Aboriginal Affairs Portfolio) | | | | |
| Pierre Legault, Associate Deputy Minister | _____ | 2016 | 07 | _____ |

Équipe du SM / DM-Team

**Approbation/signature/examen du ministre demandé pour le :**
**Minister's signature/approval/review requested by:** _____

**Remarques / remarks:** _____

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_____

**Reçue / received:** _____

**Revue interne / Seen by:** _____
**Rédaction par/ Edited by:** _____

**Received in MLU:** _____

[redacted]

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2016-016277

# MEMORANDUM FOR THE MINISTER

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